TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~410.~~ ~~206~~ 56

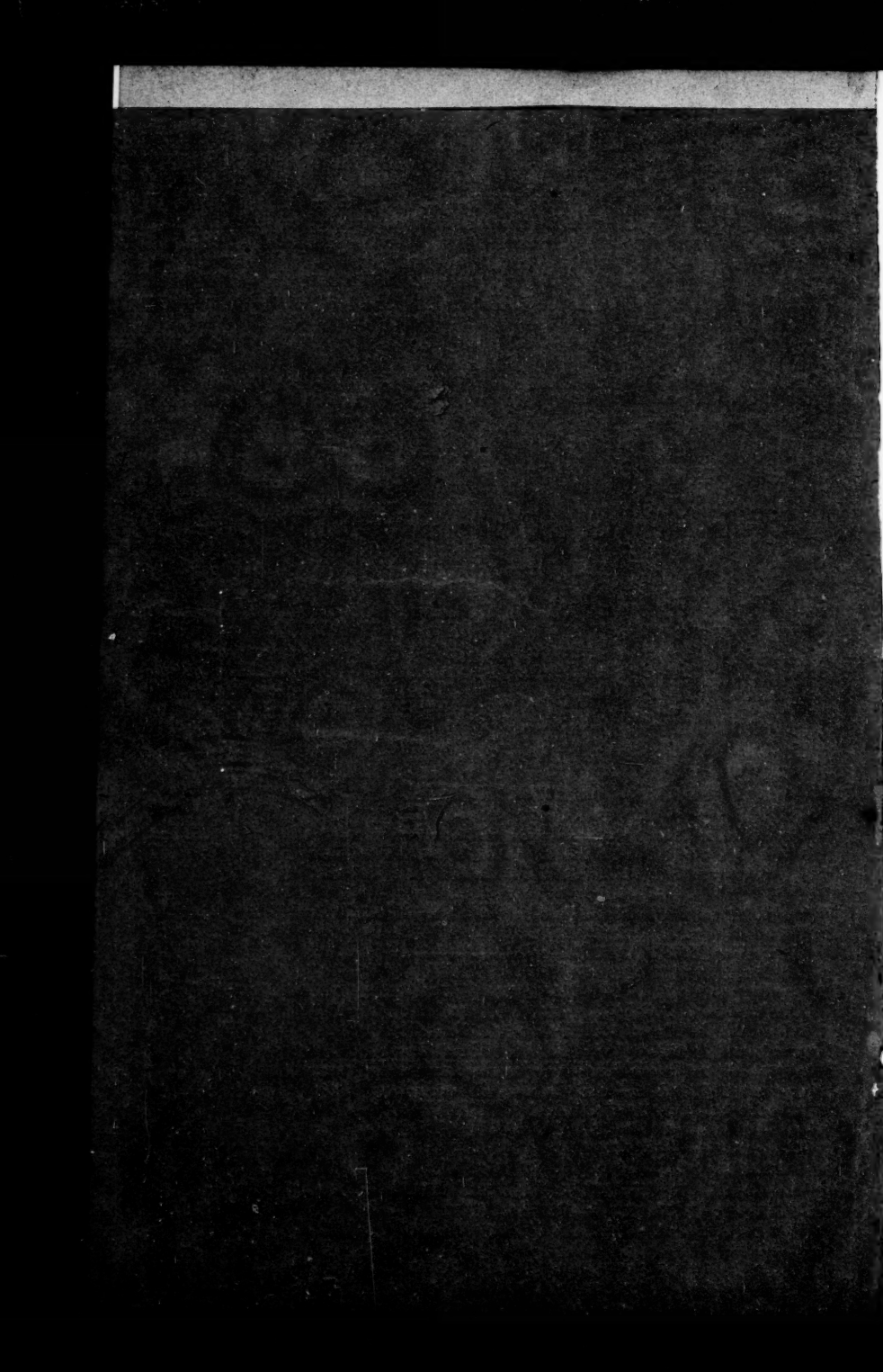
ROBERT G. HEDRICK, PLAINTIFF IN ERROR,

vs.

SAMUEL T. HUGHES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED DECEMBER 17, 1870.



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1 MISSOURI DISTRICTS, *set.:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the October term thereof, A. D. 1870.

ROBERT G. HEDRICK, PLAINTIFF, *ag'st* SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

Be it remembered that, heretofore, to wit, on the sixteenth day of March, A. D. 1870, there was filed in the office of the clerk of the circuit court of the United States for the districts of Missouri, the following declaration, to wit:

Declaration.

UNITED STATES OF AMERICA,
District of Missouri:

In the circuit court of the United States for the district of Missouri, April term, A. D. 1870.

Robert G. Hedrick, a resident and citizen of the county of Fayette, in the State of Indiana, plaintiff in *in* this suit, by R. F. Wingate, his attorney, complains of Samuel T. Hughes, a resident and citizen of the county of Howard, and State of Missouri, the defendant in this suit,
2 of a plea in ejectment, for that heretofore, to wit, on the first day of January, A. D. 1870, the plaintiff was posses'ed of certain premises situated in the county of Howard, in the State of Missouri, and described as follows, to wit, the northeast fourth, (N. E. ¼) of section seventeen, (17,) in township forty-nine, (49,) and range sixteen, (16,) and being so posses'ed thereof, the defendant, afterwards, to wit, on the tenth day of January, A. D. 1870, entered into such premises, and that he, the defendant, unlawfully withho'ds from the plaintiff the possession thereof; and the plaintiff avers that he claims title to said premises in fee, and the plaintiff further avers that, as above stated, the plaintiff is a resident and citizen of the county of Fayette, in the State of Indiana, and that the defendant is a resident and citizen of the county of Howard, in the State of Missouri.

Wherefore the plaintiff says that he is injured, and that he has sustained damages in the sum of one thousand ($1,000) dollars. The plaintiff further avers that the monthly value of the rents and profits of the premises is one hundred ($100) dollars.

Wherefore the plaintiff demands judgement for the recovery of the said premises, and one thousand ($1,000) dollars damages for the unlawful withholding of the said premises from the plaintiff, and one
3 hundred ($100) dollars for the monthly rents and profits from the rendition of judgment herein until the possession of said premises is delivered to the plaintiff, and for other proper relief, &c.

R. F. WINGATE,
Att'y for Pl'ff.

And on said sixteenth day of March, A. D. 1870, there was issued out of the clerk's office of the circuit court of the United States for the districts of Missouri, the following summons, to wit:

Summons.

MISSOURI DISTRICTS, *sct:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon Samuel T. Hughes, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the districts of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said districts, on the first Monday of April next, then and there to answer unto Robert G. Hedrick, a citizen of the State of Indiana, in a plea of trespass in ejectment to the damage of said plaintiff one thousand dollars.

Hereof fail not, and have you then and there this writ.

4 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the sixteenth day of March, A. D. eighteen hundred and seventy.

Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

On which summons, issued as aforesaid, the marshal of the United States for the western district of Missouri, made the following return, to wit:

Marshal's return.

I hereby certify that I served the within petition and writ, on the within-named Samuel T. Hughes, by reading the same in the presents and hearing of the within-named Samuel T. Hughes, on the 21st day of March, A. D. 1870, at the county of Howard, in the western district of Missouri, as I am herein ordered.

GEORGE SMITH,
U. S. Marshal of West. Dist. of Mo.,
By W'M FORBES, *Dep't.*

And afterwards at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and held at the
5 city of Saint Louis, in said districts, on the first Monday of April, A. D. 1870, the following proceedings were had in said case on Tuesday the fifth day of April, in said year, to wit:

Plea of not guilty filed.

ROBERT G. HEDRICK, PLAINTIFF, *ag'st* SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

This day comes the defendant, by attorney, and files his plea of not guilty to the action brought by plaintiff herein against him.

The plea of not guilty, filed as aforesaid, is in words and figures following, to wit:

Plea of not guilty.

In the United States circuit court for Missouri. April term, 1870.

ROBERT G. HEDRICK
vs.
SAMUEL T. HUGHES.

And the said Samuel T. Hughes, defendant, comes and defends the force and injury, when, &c., and says that the said plaintiff, his action thereof aforesaid against him, ought not to have & maintain, because he says that he is not guilty of the trespass and ejectment in the declaration alleged, in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country.

THOMAS T. GANTT,
Attorney for Defendant.

6 And afterward, at the October term of said circuit court, A. D. 1870, begun and held at the city of St. Louis on the first Monday of October, in said year, the following further proceedings were had in said case, on Monday, the tenth day of October, in said year, to wit:

Waiver of jury filed.

ROBERT G. HEDRICK, PLAINTIFF,
ag'st
SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

This day come the parties, by their respective attorneys, and file an agreement, in writing, waiving a jury in this case, and consenting and agreeing that the said case may be tried by the court without the intervention of a jury.

Which agreement, referred to in the above order, is as follows, to wit:

Jury waiver.

ROBERT HEDRICK
v.
SAMUEL T. HUGHES.

In this cause the parties waive a jury.

TH. T. GANTT, *P. D.*
R. F. WINGATE,
Att'y for Pl'tff.

7 And afterwards, at the last-mentioned term of said circuit court, the following further proceedings were had in said case, on Saturday, the fifth day of November, in said year, to wit:

Hearing of case begun.

ROBERT G. HEDRICK, PLAINTIFF,
ag'st
SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

This day came the parties, by their respective attorneys, and an agree-

ment having been heretofore filed herein, waiving a jury in this case, and consenting that the same be tried by the court without the intervention of a jury, and the case being regularly called for trial, and both parties being ready, said case was in part heared by the court without the intervention of a jury, and the hearing thereof not being concluded at the hour of adjournment—

It is ordered that further proceedings herein be continued until Monday morning next.

8

9 And afterwards, at the last-mentioned term of said circuit court, the following further proceedings were had in said case on Monday, the seventh day of November, in said year, to wit:

Hearing of case resumed.—Judgement for defendant.

ROBERT G. HEDRICK, PLAINTIFF, *ag'st* SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

This day came again the parties, by their respective attorneys, and the hearing of this case by the court without the intervention of a jury was resumed; and said case was further heard, and the hearing thereof being concluded, the case was submitted to the court upon the pleadings and proofs; and upon consideration thereof, and being fully advised of and concerning the premises, the court finds for the defendant on the issues joined herein.

It is, therefore, now considered by the court that the plaintiff, Robert G. Hedrick, take nothing by his writ herein, and that the defendant, Samuel T. Hughes, go hence without day, and recover against the said plaintiff the costs in this behalf expended, and that execution or a fee bill be issued for such costs.

10 And afterwards, at said regular stated term of said court, the following further proceedings were had said case on Saturday, the 12th day of November, in said year:

Bill of exceptions filed.

ROBERT G. HEDRICK, PLAINTIFF, *ag'st* SAMUEL T. HUGHES, DEFENDANT. } Ejectment.

This day comes the plaintiff, by attorney, and files his bill of exceptions in this case, which, being examined by the court, is signed, and sealed, and ordered to be made part of the record herein.

The bill of exceptions referred to in the foregoing order is in words and figures following, to wit:

Bill of exceptions.

ROBERT G. HEDRICK, PLAINTIFF, *vs.* SAMUEL T. HUGHES, DEF'T.

U. S. cir. *circuit* court for the districts of Missouri. October term, 1870.

Be it remembered that this cause came on to be heard on the 5th day

of November, 1870, before the court sitting as a jury, a waiver of
11 a jury trial having been previously filed. Whereupon the plaintiff offered in evidence—

1. A patent certificate from the United States to Albert C. Widdicombe, dated June 1, 1868, as follows:

Patent to A. C. Widdicombe.

Examined.

The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," there has been deposited in the General Land Office scrip No. 1535 for one quarter section of land in favor of the State of Kentucky, duly assigned by the proper authority of the said State to Albert C. Widdicombe, with evidence that the same has been located upon the northeast quarter of section seventeen, in township forty-nine, of range sixteen, in the district of lands subject to sale at Boonville, Missouri, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general:

Now know ye that there is, therefore, granted by the United States unto the said Albert C. Widdicombe, as assignee as aforesaid, and to his heirs, the tract of land above described, to have and to hold
12 the said tract of land, with the appurtenances thereof, unto the said Albert C. Widdicombe, as assignee as aforesaid, and to his heirs and assigns forever.

[SEAL.] In testimony whereof I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

By the President.

ANDREW JOHNSON,
By FRANK COWAN, *Sec'y.*
JN. GRANGER,
Recorder of the General Land Office.

Recorded vol. II, page 150.

MISSOURI, *Howard County, set:*

I, Cha's H. Stewart, clerk circuit court & ex-officio recorder in and for said county, do hereby certify that the within patent was filed for record June 7th, 1869, and is recorded in deed-book 13, page 217.

Given under my hand and the seal of said court, at office, the day & year aforesaid.

[SEAL.] C. H. STEWART, *Cl'k.*

13 2. A deed from said Widdicombe to the plaintiff, dated September 8, 1869, as follows:

Deed from Widdicombe to Hedrick.

This deed made and entered into this eighth day of September, eighteen hundred and sixty-nine, by and between Albert C. Widdicombe and Susan P. Widdicombe, his wife, of Cooper County, Missouri, parties of the first part, and Robert G. Hedrick, of Fayette County, Indiana, party of the second part, witnesseth: That the said party of the first part in consideration of fifteen hundred dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents bargain, sell, convey, and confirm unto the said party of the second part, the following-described tract or parcel of land lying in Howard County, State of Missouri, to wit: The northeast quarter of section seventeen, (17,) in township forty-nine, (49,) of range sixteen, (16,) containing one hundred and sixty acres, more or less: To have and to hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging, to the said party of the second part, and to him and his heirs and assigns forever, the said Albert C. Widdicombe hereby covenanting that he and his heirs, executors, and administrators shall and will warrant and defend the title to
14 the premises to the said party of the second part, and to his heirs and assigns forever, against the lawful claims of all persons.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALBERT C. WIDDICOMBE. [SEAL.]
SUSAN P. WIDDICOMBE. [SEAL.]

[Three 50-cent revenue stamp, cancelled.]

STATE OF MISSOURI,
County of Cooper, ss:

Be it remembered that, on this eight' day of September, A. D. eighteen hundred and sixty-nine, before me the undersigned, a notary public within and for the county and State aforesaid, came Albert C. Widdicombe and Susan P. Widdicombe, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they have acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Susan P. Widdicombe, being by me first made acquainted with the contents of said deed, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquished her dower to the real estate therein described, freely and without compulsion or undue influence of her said husband.

15 In testimony whereof I hereunto set my hand and seal the date last aforesaid.

[SEAL.] R. H. BECHLER, [L. S.]
Notary Public.

MISSOURI, *Howard County, set:*

I, Cha's H. Stewart, clerk circuit court & ex-officio recorder in & for said county, do hereby certify that the within deed was filed for record in my office March 21st, 1870, and is recorded in deed-book 13, page 394.

Given under my hand and the seal of said court at office this day & year aforesaid.

[SEAL.] C. H. STEWART, *Clerk.*

3. A stipulation admitting defendant's possession of the premises described in the declaration.

Stipulation admitting defendant's possession.

In the circuit court of the U. S., April term, 1870.

ROBERT G. HEDRICK }
vs.
SAMUEL T. HUGHES. }

The defendant admits being in possession of the premises involved in this suit, claiming title to the same at the time of the institution of the suit here, and that he had been so in the possession of the same for a long time prior to the time of the commencement of said suit, to wit, since 3d April, 1839. This admi'tion is to be received as evidence in this cause & made a part of the record therein as such evidence.

16

R. F. WINGATE &
CHESTER HARDING,
Atty's for Plaintiff.
THO'S T. GANTT, *P. D.*

He also proved the value of the monthly rents and profits to be at the rate of five hundred dollars per annum, and that the value of the premises is more than ten thousand dollars.

Here the plaintiff rested.

The defendant then introduced in evidence—

1. A patent from the United States to one Burckhardt, dated Aug. 10, 1825.

Patent to Burckhartt.

No. 1628.] Examined. [Page 478, vol. 4.

John Quincy Adams, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye that Nicholas S. Burckhartt, assignee of Christopher Burckhartt, having deposited in the General Land Office a certificate of the register of the land office at Franklin, in Missouri, whereby it appears that full payment has been made for the northeast quarter of section sixteen, in township forty-nine (N. M. R.) of range sixteen, containing two hundred and forty acres of the lands directed to be sold at Franklin, Missouri, by the acts of Congress providing for the sale of the lands of the United States in Missouri, there is

17

granted by the United States unto the said Nicholas S. Burckhartt, and to his heirs, the quarter lot or section of land above described: To have and to hold the said quarter lot or section of land, with the appurtenances unto the said Nicholas Burckhartt, and to his heirs and assigns forever.

In testimony whereof I have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the tenth day of August, in the year of our Lord one thousand eight hundred and twenty-five, and of the independence of the United States of America the fiftieth.

By the President.

J. Q. A.
G. G.,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *July 11th*, 1870.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and
18 caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] JOS. S. WILSON,
Commissioner of the General Land Office.

2. A patent from the United States dated 10 Nov., 1825.

Patent to N. S. Burckhartt.

1808.} Examined. [Page 174, vol. 6.

John Quincy Adams, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye that Nicholas S. Burckhartt, ass'n of Rodger & Eliza. Barton & Christ. Richardson, heirs of Ja's Richardson, dec'd, having deposited in the General Land Office a certificate of the register of the land office at Franklin, in Missouri, whereby it appears that full payment has been made for the west half of the southeast quarter and northwest quarter of section sixteen, in township forty-nine, north of Missouri River, of range sixteen, containing two hundred and forty acres, of the lands directed to be sold at Franklin by the act of Congress providing for the sale of the lands of the United States, in Missouri, there is granted by the United States unto the said Nicholas S. Burckhart, and to his heir, the quarter & ½ quarter lot or section of land above described: To have and to hold the said quarter & half quarter lot or section of land with the appurtenances unto the said
19 Nicholas S. Burckhart, and to his heirs and assigns forever.

In testimony whereof I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the tenth day of November, in the year of our Lord one thousand eight hundred and twenty-five, and of the independence of the United States of America the fiftieth.

By the President.

Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *July* , 1870.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed by name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOS. S. WILSON,
Commissioner of the General Land Office.

20 3. A certified copy of the records of the county court of Howard County, Missouri, showing the appointment of Owen Rollins

as commissioner to sell school lands, &c., and subsequent proceedings, as follows:

Rollins appointed com'r.

STATE OF MISSOURI, *County of Howard, ss:*

Be it remembered that at a term of the county court of the county of Howard, in the State of Missouri, begun and held at the court-house in the town of Fayette, within said county, on the first Monday in May, being the second of said month, one thousand eight hundred and thirty-one, were present John P. Morris and Henry Lewis, justices of said court, clerk and sheriff, the following proceedings were had, to wit:

"The court appoint Owen Rawlings commissioner of the township school lands in Howard County. Ordered that he give bond conditioned as the law directs, in the sum of thirty thousand dollars, which was done, together with Nicholas S. Burckhartt, Girard Robinson, James Turner, Thomas Burris, and Joel H. Hayden, his securities, which was received by the court."

And afterwards, at a term of said county court, held at the court-house in the town of Fayette, within said county of Howard, on
21 the 26th day of January, 1832, David R. Drake and John P. Morris, justices of said court, clerk and sheriff being present, the following proceedings were had, to wit:

"Ordered that the commissioner of township school lands in Howard County proceede to sell, before the court-house door, in the town of Fayette, within and for the county of Howard, for cash in hand, the sixteenth section in township forty-nine, and range sixteen; and it is further ordered that the said commissioner give at least sixty days' previous notice of the time, terms, and place of said sale, according to law."

Copy of the petition filed in said court, on which said order last above copied was founded.

To Owen Rawlins, commissioner for the township school lands in the county of Howard:

The petition of the undersigned, householders, inhabitants, and residing in the congressional township number forty-nine, in range number sixteen, and of fractional township number forty-eight, in the same range, which said fractional township has been, by the county court, incorporated and attached to the aforesaid township forty-nine, represent that they are desirous of selling the school lands that belong and are owned by the inhabitants of said township and fractional township, and request that you will, under the direction and authority of
22 the county court of said county of Howard, proceed to advertise and sell the same, according to law in that behalf made and provided.

Subscribers' names	No.	Subscribers' names.
1. Moss Prewitt.	18.	Lewis Switzler.
2. W. W. Redman.	19.	James Dorrell, sr.
3. P. S. Bridges.	20.	Robert Coleman.
4. Caleb Jones.	21.	J. L. Ammons.
5. W'm McNess.	22.	Stephen Lacy.
6. Henry Coleman.	23.	Allen Tate.
7. W. H. B. Lawson.	24.	J. Hobbs.

8. M. Ferguson.
9. John Hixon.
10. Richard Brunsun.
11. Richard Yielding.
12.
13. H. Sugart.
14. Ja's W. Brannan.
15. William Sullins.
16. William Harley.
17. Owen Rawlins.

	Subscribers' names
23	35. R. S. Severage.
	36. J. W. Walton.
	37. F. M. Fulkerson.
	38. Elijah Jones.
	39. A. G. Tompkins.
	40. Stebins Johnson.
	41. William M. Bradley.
	42. F. Ronimous.
	43. F. E. Kirkpatrick.
	44. Willis J. Robinson.
	45. John Walker.
	46. Elizabeth Hubbard.
	47. Sarah Walker.
	48. James Allcorn.
	49. George S. Allcorn.
	50. Nancy Ferguson.
	51. Peter B. Harris.
	52. Giles M. Samuel.
	53. W'm M. Kinkade.
	54. Isaac Lowthain.
	55. Jeremiah Murphy.
	56. Robert Brannain.
	57. Shelby Peter.
	58. Yearly Tucker.
	59. N. Ford.
	60. W'm Hook.

	Subscribers' names
	61. H. Cornelius.
24	89. Anthony Gray.
	90. Melvin Fineing.
	91. James Watts.
	92. John Hulett.
	93. Claibourn Shelton.
	94. William Lee.
	95. John Jones.
	96. John Blay.
	97. M. F. Simmons.
	98. Allen York.
	99. Shad Barns.
	100. Thomas Burnes.
	101. H. L. Boone.
	102. Joseph Watts.
	103. Hugh Acres.
	104. D. E. Sanders.

25. C. B. Richardson.
26. D. R. Drake, j'r.
27. S. B. Hobbs.
28. B. C. Fugitt.
29. Elliott Allsup.
30. Francis Brown.
31. R. W. Briggs.
32. James Doolin.
33. N. S. Burckhartt.
34. Asa L. Stoors.

No.	Subscribers' names.
62.	A. Callaway.
63.	David Mason.
64.	Andrew Hutchison.
65.	Joseph Martin.
66.	Washington Dorrell.
67.	M. Switzler.
68.	Fenton Garrett.
69.	John L. Hickman.
70.	N. Hutchison.
71.	James H. Benson.
72.	Henry Knouse.
73.	William Sibert.
74.	Samuel Ray.
75.	William Levit.
76.	William Hawkins.
77.	James Pherris.
78.	Alphonse Wetmore.
79.	George Chapman.
80.	Milton T. Younger.
81.	Benjamin Lively.
82.	W'm Collins.
83.	James Reynolds.
84.	John Edwards.
85.	Sam. C. McNeas.
86.	George Knox.
87.	Jno. Murphy.

No.	Subscribers' names.
88.	Isaac Cartright.
117.	Jesse W. Murphy.
118.	William Taylor.
119.	John Wolfskill.
120.	John McCord.
121.	Sheppard Gum.
122.	'John F. Thompson.
123.	Willis Parkes.
124.	C. S. Yancy.
125.	Robert Isaacs.
126.	Samuel Jester.
126.	Lewis Teter.
127.	Hugh Stewart.
128.	Thompson Mullins.
129.	John Elliott.
130.	A Roseberry.
131.	Aaron Collier.

105. Anderson Philpots.
106. Mathias Benson.
107. Charles Bomer.
108. J. E. McCampbell.
109. William Young.
110. W'm Smith.
111. Peter Gillum.
112. Jacob Waysman.
113. Thomas M. Campbell.
114. P. W. Thompson.
115. James Daws.
116. Hardaman Stone.
132. Joseph Hughes.
133. James Hughes.
134. Ad. Meridith.
135. John G. Elkin.
136. Thomas Embree.
137. Charles Hughes.
138. Jerry Kingsbury.
139. Charles Carrole.
140. Judson Brashear.
141. Reuben Long.
142. Samuel Blithe.
143. James Tindall.

Subscribers' names

144. William Terrill.
145. Enoch Crews.
146. James Turner.
148. Jefferson Ray.
149. Obediah Tindall.
150. Winifrad Tindall.
151. George Burnes.
152. Elizabeth Burckhartt.
153. Charles Robinson.
154. Widson G. Turner.
155. Joseph Crews.
156. Ruth Spope.

No. Subscribers' names.

157. James How.
158. Evans Lee.
159. Francis Whitlock.
160. Martin Suttle.
161. J. H. Hater.
162. Lucy Ferguson.
163. J. W. Redman.
164. Gerard Robinson.
165. David R. Drake.
166. Samuel M. Hughes.
167. Daniel Rector.

We whose names are hereunto annexed do swear that the foregoing named persons whose names are subscribed to the annexed petition, signed the same publickly and freely, and that the true intent and meaning of said petition was made known to them before signing, and that more than three-fourths of the free white householders, residence in said township and fractional township therein mentioned, signed said petition as aforesaid.

Given under our hands this the 21st day of January, 1832.

GERARD ROBINSON,
D. R. DRAKE.

STATE OF MISSOURI, *County of Howard*, ss:

Sworn and subscribed to before me, a justice of the peace within and for the county aforesaid, this the 21st January, 1832.

N. S. BURCKHARTT, *J. P.*

And afterwards, at the August term of said court, and on the 23d day of August, 1832, David R. Drake and Henry Lewis, justices of said court, clerk and sheriff being present, the following proceedings were had in said court, to wit:

"Owen Rawlins, commissioner of township school land in Howard County, made the following report of the sale of school lands, which was received and ordered to be recorded."

Which report is in the following words and figures, to wit:

"The statement or return of the undersigned commissioner of the township school lands within and for the county of Howard and State of Missouri, appointed such by the Howard County court by virtue of a law passed by the general assembly, entitled and act to provide for the sale of the township school lands aforesaid, January the 17th, 1831, respectfully represents that, in accordance with notice and instructions given me by the aforesaid county court, I did, after advertising the sale thereof, agreeable to law, sell at public sale, at the town of Fayette,

the seat of justice in the county aforesaid, on the second and
27 third days of April, 1832, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon, of the said days, expose to sale four sections of land, the following-described tracts of land, that is to say:

The west half of the northeast quarter of section No. sixteen, in township No. fifty-one, of range No. seventeen, and Henry Lewis, of the county of Howard, and State of Missouri, was the highest and last bidder; it was set down to him at one dollar and twenty-five cents per acre.

Also, the west half of the aforesaid quarter, and the aforesaid Henry Lewis was the last and highest bidder; it was set down to him at one dollar and thirty-one cents per acre.

Also, the east half of the northwest quarter of section No. sixteen, and same range and township as aforesaid, and Talton Turner and James Earickson, of the county and State aforesaid, was the last and highest bidder; it was set down to them at three dollars and seventy-two cents per acre.

Also, the west half of the last-mentioned quarter, and Talton Turner and James Earickson of the county and State aforesaid, was the last and highest bidder; it was set down to them at one dollar and twenty-five cents per acre.

28 Also, the west half of the southwest quarter of the same section aforesaid, and Talton Turner and James Earickson, of the county and State aforesaid, was the last and highest bidder; it was set down to them at one dollar and twenty-five cents per acre.

Also, the east half of the last-mentioned quarter, and Talton Turner and James Earickson was the last and highest bidder; it was set down to them at one dollar and twenty-five cents per acre.

Also, the west half of the southeast quarter of section No. sixteen, in the same range and township as aforesaid, and Edward V. Warren, of the county of Howard, and State of Missouri, was the last and highest bidder; it was set down to him at one dollar and twenty cents per acre.

Also, the east half of the last-mentioned quarter, and the aforesaid Edward V. Warren was the last and highest bidder; it was set down to him at one dollar and seventy cents per acre.

Also, the east half of the northeast quarter of section No. sixteen, in township No. fifty, in range number sixteen, and Nathaniel Ford and Garrison Patrick, of the county and State aforesaid, was the last
29 and highest bidder; it was set down to them at two dollars and fifty-two cents per acre.

Also, the west half of the last-mentioned quarter, and Roland Hughes, of the county of Howard, and State of Missouri, being the last and highest bidder; it was set down to him at two dollars and one cent per acre.

Also, the east half of the northwest quarter of the aforesaid section sixteen, in the same range and township as aforesaid, and Roland Hughes, of the county and State aforesaid, being the last and highest bidders, it was set down to him at two dollars and fifty-one cents per acre.

Also, the west half of the last-mentioned quarter, and the aforesaid Roland Hughes, being the last and highest bidder, it was set down to him at three dollars and seventy cents per acre.

Also, the west half of the southwest quarter of the aforesaid section and township and range, and Roland Hughes, being the highest and last bidder, it was set down to him at five dollars and eighteen cent' per acre.

Also, the east half of the last-mentioned quarter, and the aforesaid Roland Hughes, being the last and highest bidder, it was set down to him at two dollars and fifty cents per acre.

Also, the west half of the southeast quarter of the same section and township, and Thomas A. Smith, of Saline County, and State of
30 Missouri, being the last and highest bidder, it was set down to him at two dollars per acre.

Also, the east half of the last-mentioned quarter, and the aforesaid Thomas A. Smith, of Saline County, and State of Missouri, being the last and highest bidder, it was set down to him at three dollars per acre.

Also, the last half of the northeast quarter of section number sixteen, in township number fifty, of range number seventeen, and Adam C. Woods, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at one dollar and thirty-five cents per acre.

Also, the west half of the last-mentioned quarter section, and Alexander Bradley, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at one dollar and twenty-five cents per acre.

Also, the east half of the northwest quarter of section number sixteen, same range and township, and Benjamin McCrary, of the county of Howard, and State of Missouri, being the last and highest bidders, it was set down to him at one dollar and forty-one cents per acre.

Also, the west half of the last-mentioned quarter section, and
31 Adam Murry, *Murry*, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at one dollar and twenty-six cents per acre.

Also, the southwest quarter of section sixteen, same range and township, and John Ship, of Howard County, and State of Missouri, being the last and highest bidder, it was set down to him at one dollar and twenty cents per acre.

Also, the east half of the last-mentioned quarter section, and Henry A. Kevitt, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at one dollar and fifty cents per acre.

Also, the west half of the southeast quarter *are* unsold; also, the east half of the same quarter unsold.

Also, the east half of the southwest quarter of section No. twenty-two, township No. forty-nine, range No. sixteen, and Samuel M. Hughes, being the last and highest bidder, it was set down to him at two dollars per acre.

Also, the west half of the last-mentioned quarter section, and Joshua W. Redman, of the county of Howard, and State of Missouri, being the last and *and* highest bidder, it was set down to him at three dollars and twenty-six cents per acre.

Also, the east half of the northwest quarter of section fifteen,
32 in township forty-nine, of range sixteen, and Jacob Kortz, of Howard County, Missouri, being the last and highest bidder, it was set down to him at one dollar and fifty-one cents per acre.

Also, the west half of the last-mentioned quarter section, and Jacob Kortz and Nicholas S. Burckhartt, being the last and highest bidder', it was set down to them at four dollars per acre.

Also, the east half of the southwest quarter of section No. sixteen, in the same range and township as aforesaid, and Samuel Teeter and Nicholas S. Burckhartt, being the last and highest bidder', it was set down to them at two dollars and one cent per acre.

Also, the west half of the last-mentioned quarter section, and Samuel M. Hughes, being the last and highest bidder, it was set down to him at five dollars and four cents per acre.

Also, the east half of the northeast quarter of section No. seventeen,

in township No. forty-nine, and of range No. sixteen, and Braxton C. Fugitt, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at six dollars and eighty-one cents per acre.

Also, the west half of the last-mentioned quarter section, and
33 James Hughes, of the county of Howard, and State of Missouri, being the last and highest bidder, it was set down to him at seven dollars and one cent per acre.

Also, the east half of the northwest quarter of section No. twenty-two, in township No. forty-nine, of range sixteen, and Joseph Crews and Nicholas S. Burckhartt, of the county of Howard, and State of Missouri, being the last and highest bidder', it was set down to *him* at three dollars and fifty cents per acre.

Each of the above-mentioned half-quarter sections contains eighty acres, except the last half of the southwest quarter of section No. sixteen, in township No. fifty, of range sixteen, which is sixty-four acres and ninety-five hundredths of an acre.

All of which is respectfully submitted.

Given under my hand this fifteenth day of June, 1832.

OWEN RAWLINS,
Commissioner for Howard County.

And afterwards, at the May term, 1833, of said county court, and on the 7th day of May, 1833, David R. Drake, Henry Lewis, and David Peeler, justices of said court, and clerk and sheriff being present, the following proceedings were had to wit:

"Owen Rawlins, commissioner of township school lands in How-
34 ard County, presented the following report of his proceedings as commissioner, which was ordered to be recorded, viz:

Amount of purchase-money belonging to township 50, range 16		$1,793 57½
Commissioner's fees	$35 87	
1 day of sale	2 00	
Contingent expenses	4 00	
Amount of purchase-money belonging to township 50, in range 17		$643 20
Commissioner's fees	$12 86	
One day sale	2 00	
Contingent expenses	4 00	
Amount purchase-money belonging to township 51, in range 17		$1,020 40
Commissioner's fees	$20 40	
One day sale	2 00	
Contingent expenses	4 00	
Amount of money belonging to township 49, in range 16		$3,132 00
Commissioner's fees	$62 64	
One day sale	2 00	
Contingent expenses	4 00	

This 7th day of May, 1833.

OWEN RAWLINS,
Commissioner of Township School Lands, Howard County.

STATE OF MISSOURI, *County of Howard, ss:*

35 I, Andrew J. Herndon, clerk of the county court within and for the county of Howard, in the State of Missouri, do hereby certify that all of the foregoing orders and proceedings of said county court included in the foregoing sixteen pages are truly and correctly copied from the records of said court now in my office.

Given under my hand and the seal of said court at office in Fayette, in said county, this 20th day of June, A. D. 1870.

[SEAL.] A. J. HERNDON,
Clerk.

[5-cent revenue stamp.]

4. Rollins' certificate of payment by Fugit for the E.½ N. E., qr. sec. 17, T. 49, R. 16, as follows:

Rawlins' certificate of payment by Fugitt.

No. 47. FAYETTE, HOWARD COUNTY, MISSOURI,
April 2nd, 1832.

Received of Brackston C. Fugitt, of Howard County, State of Missouri, the sum of five hundred and forty-four dollars and eighty cents, being in full for the east half of the northeast quarter of section No. seventeen, in township No. forty-nine, of range No. sixteen, containing eighty acres, at the rate of six dollars and eighty-one cents per acre.

OWEN RAWLINS,
Commissioner.

I, Joseph H. McGee, register of lands for the State of Missouri, do hereby certify the within to be a true and correct copy of commis-
36 sioner's certificate of purchase issued on the second day of April, 1832, as it appears from the record in my office in book , page .

In testimony whereof I have hereunto set my hand and affixed my seal of office, at the city of Jefferson, this third day of November, 1870.

[SEAL.] JOSEPH H. McGEE,
Register of Lands.

5. Rollins' certificate of payment by James Hughes for the W. ½ of the same quarter section, as follows:

Rawlins' certificate of payment by Hughes.

No. 48.] FAYETTE, HOWARD COUNTY, MISSOURI,
April 2nd, 1832.

Received of James Hughes, of Howard County, State of Missouri, the sum of five hundred and sixty dollars and eighty cents, being in full, for the west half of the northeast quarter of section No. seventeen, in township No. forty-nine, of range No. sixteen, containing eighty acres, at the rate of seven dollars and one cent per acre.

OWEN RAWLINS,
Commissioner.

I, Joseph H. McGee, register of lands for the State of Missouri, do hereby certify the within to be a true and correct copy of commis-
37 sioner's certificate of purchase issued on the second day of April, 1832, as it appears from the record in my office in book , page .

In testimony whereof I have hereunto set my hand and affixed my seal of office, at the city of Jefferson, this third day of November, 1870.

[SEAL.] JOSEPH H. McGEE,
Register of Lands.

6. A patent from the State of Missouri to Fugit, dated Nov. 14, 1832, as follows:

Patent from State of Mo. to Fugit.

Certificate No. 47. [159.

The State of Missouri to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in the *in the* office of the auditor of public accounts of the said State a certificate, number forty-seven, of the commissioner for the sale of the township school lands, in the county of Howard, whereby it appears that, in pursuance of an act of the general assembly of said State, entitled "An act to provide for the sale of the township school lands," Brackston C. Fugitt became the purchaser of the east half of the northeast quarter of section seventeen, in township forty-nine, of range sixteen, containing eighty acres, at the price of six dollars eighty-one cents per acre, ("being land granted
38 by the United States to the State of Missouri for the use of the inhabitants of said township for the use of schools,") for the sum of five hundred & forty-four dollars and eighty cents; which sum, it further appears, has been fully paid by the said Brackston C. Fugitt.

Now, in consideration of the premises, and in conformity with the provisions of the hereinbefore recited act, the State of Missouri hath given and granted, and by these presents does give and grant, unto the said Brackston C. Fugitt, and to his heirs, the tract of land above described: To have and to hold the said tract, with the appurtenances, unto the said Brackston C. Fugitt, and to his heirs and assigns, forever.

In testimony whereof I, John Miller, governor of the State of [SEAL.] Missouri, have caused these letters to be made patent and the seal of the State to be hereunto affixed by the secretary of state.

Given under my hand at the city of Jefferson the fourteenth day of November, in the year of our Lord one thousand eight hundred and thirty-two, and of the State of Missouri the twelfth.

JOHN MILLER.

By the governor:

E. BANCROFT,
Auditor of Public Accounts.
JOHN C. EDWARDS,
Secretary of State.

39 I, Joseph H. McGee, register of lands for the State of Missouri, do hereby certify the within to be a true and correct copy of patent to Brackston C. Fugitt, issued on the fourteenth day of November, 1832, as it appears from the record in my office in book "A," page "159."

In testimony whereof I have hereunto set my hand and affixed my seal of office, at the city of Jefferson, this twenty-fourth day of March, 1870.

[SEAL.] JOSEPH H. McGEE,
Register of Lands.

7. A patent from the State of Missouri to James Hughes, dated Nov'r 14, 1832, as follows, viz:

Patent from State of Mo. to James Hughes.

Certificate No. 48. [160

The State of Missouri to all to whom these presents shall come, greeting:

Know ye that there has been deposited in the office of the auditor of public accounts of said State a certificate, number forty-eight, of the commissioner for the sale of the township school lands in the county of Howard, whereby it appears that, in pursuance of an act of the general assembly of said State, entitled "An act to provide for the sale of the township school lands," James Hughes became the purchaser of the west half of the northeast quarter of section seventeen, in township forty-nine, of range sixteen, containing eighty acres, at the price of seven dol-
40 lars and one cents per acre, ("being land granted by the United States to the State of Missouri for the use of the inhabitants of said township for the use of schools,") for the sum of five hundred & sixty dollars and eighty cents; which sum, it further appears, has been fully paid by the said James Hughes.

Now, in consideration of the premises, and in conformity with the provisions of the hereinbefore recited act, the State of Missouri hath given and granted, and by these presents does give and grant, unto the said James Hughes, and to his heirs, the tract of land above described:

To have and to hold the said tract, with the appurtenances, unto the said James Hughes, and to his heirs and assigns, forever.

[SEAL.] In testimony whereof I, John Miller, governor of the State of Missouri, have caused these letters to be made patent, and the seal of the State to be hereunto affixed by the secretary of state. Given under my hand, at the city of Jefferson, the fourteenth day of November, in the year of our Lord one thousand eight hundred and thirty-two, and of the State of Missouri the twelfth.

JOHN MILLER.

By the governor:

E. BARCROFT,
Auditor of Public Accounts.
JOHN C. EDWARDS,
Secretary of State.

41 I, Joseph H. McGee, register of lands for the State of Missouri, do hereby certify the within to be a true and correct copy of patent to James Hughes, issued on the fourteenth day of November, 1832, as it appears from the record in my office, in book "A," page "160."

In testimony whereof I have hereunto set my hand and affixed my seal of office, at the city of Jefferson, this twenty-fourth day of March, 1870.

JOSEPH H. McGEE,
Register of Lands.

The defendant then showed, by subequent deeds, that he had acquired and now holds all the title of said Fugit and James Hughes in said lands.

8. The defendant then read the following depositions, viz:

Elliot's affidavit.

NEWTON G. ELLIOT, of lawful age, being produced, sworn & examined on the part of the defendant, deposeth & saith:

1 question by d'f't. State where you reside, and how far from the N. E. q'r of section 17, township 49, of range 16; and state who is in possession of said quarter section now, and how long he has been in possession, and how he claims it.

Ans. I reside one mile southwest of N. E. q'r section seventeen, township forty-nine, range sixteen, in the county of Howard, & State
42 of Missouri, Mr. S. T. Hughes, the defendant, is now in posses' of said land, and has been in continuous possession for the last thirty-one years, and has been claiming it as his own land.

Question by same. What kind of improvements are on this land, and who put them there, and the value of such improvements?

Ans. There is a large two-story dwelling-house, well finished, two barns, stables, ice-house, tool-house, carriage-house, and other out-houses, and all of these improvements were made by the defendant, and the land was cleared and fenced by him, and the whole improvements are worth about nine thousand dollars, not including the clearing the land which is worth ten dollars per acre.

Question by same. State, if you know, how, when, and for what purpose this land was originally sold, & who bought it?

Ans. It was sold by Owen Rawlins, as school commissioner of Howard County, and it was sold as school lands some several years before the defendant occupied it; the west half was sold to James Hughes, and the east half to Braxton C. Fugit.

And further this deponent sayeth not.

N. G. ELLIOTT.

43 Sworn and subscribed to before me, and in my presence, on the day, at the place, and within the hours in that behalf aforesaid.

[SEAL.] R. H. HOWARD,
Notary Public.

Kingsbury's affidavit.

HORACE KINGSBURY, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

I have been a resident of Howard County since the year 1817, and residing in the neighborhood of northeast quarter of section seventeen, township forty-nine, (49,) and range sixteen, (16,) the land now in dispute. The defendant, Sam'l T. Hughes (or Taylor Hughes as he is commonly called) has been in actual possession of said land since the year, 1839, and he cleared and fenced it, and erected on it a large two-story dwelling-house, barnes, and other out-houses, and has been cultivating the land and claiming it as his own for more than thirty years, and I consider the improvements made by the defendant on said land worth ten thousand dollars. I know that Owen Rawlins was the commissioner of schools for the county of Howard, in the years of thirty-one & 2, and the aforesaid land was treated and rented out as school land for several years before it was sold, being a small field on it of about eight or ten acres, and it was sold by the county school
44 commissioner in the year, 1832, as school lands, and Braxton Fugit, bought the east part, and I think James Hughes bought the west part.

And further this deponent sayeth not.

HORACE KINGSBURY.

Sworn and subscribed to before me and in my presence, on the day, at the place, and within the hours in that behalf aforesaid.

[SEAL.] R. H. HOWARD,
Notary Public.

The taking of these depositions is adjourned to Monday next, July 25th, 1870, at 10½ o'clock a. m., at the same place, by the agreement of both parties.

JULY 25TH, 1870.—Opened pursuant to adjournment.

Wright's affidavit.

THOMAS B. WRIGHT, of lawful age, being produced and sworn, deposeth and saith:

1st question by d'f't. Are you familiar with the books in the United States register's office, at Boonville, Missouri? if so, state if you have examined the tract-book in said office, recently, and what was the result of your examination.

Ans. I am tolerably familiar with the records in the U. S. land office; have become so from practice in the office as an attorney & land agent. On the 22d inst., at the request of the defendant, Samuel T. Hughes, I examined vol. 3 of the tract-books, in the old Fayette land districts;

45 I found pages 375, 376, 377, & 378 of said book had been taken from the book, or at least they could not be found in the book. These four pages contained the record of the disposition of the land, by the Gov., in township 49, of range 16, north of Mo. River, except from sec. 1 to 6, inclusive, & also sections 1, 2, & 3, of township 50, of range 16; the township referred to is in Howard County, Missouri.

2d question by same. Is the original platt, containing township 49, range 16, referred to above, now in the land office at Boonville, Mo; if not, what is the date of the platt of this township now used in said land office?

Ans. I have never seen but one plat in the land office of township 49, R. 16. It purports to be a copy of the original from the surveyor general's office, in St. Louis, & is dated some time in the year A. D. 1848. There is no record of entries on this plat. I first became familiar with the books in the land office about the year 1866 or 1867.

Further this deponent saith not.

THO'S B. WRIGHT.

Sworn and subscribed to before me and in my presence on the day, at the place, and within the hours in that behalf aforesaid.

[SEAL.] R. H. HOWARD,
Notary Public.

Gott's affidavit.

JOHN N. GOTT, of lawful age, being produced, sworn, and examined, on the part of the defendant, deposeth and saieth:

46 1st question by d'f't. State what office you hold and how long you have held it; state if you ever examined the tract-book in the U. S. land office at Boonville, Missouri, and when did you examine it; and state what was the result of your examination.

Ans. I am receiver of public moneys in the Boonville land office; have held the position since the 17th of February, 1870. I have examined the tract-book containing township 49, range 16, north of Mo. River and found that there were several pages missing in the original tract-book. This examination was made since the first of March, 1870.

Question by same. At what part of the book are these pages missing? That part of the book containing section 17, township 49, range 16 is missing.

3d question by same. Will you state if you have examined what is the date of the platt now used in the land office at Boonville, Mo., of township 49, of range 16; please examine Exhibit A, hereto attached, & state what you know about it.

The plat appears to be dated January 28th, 1848, as shown by "Exhibit A," hereto attached, which was copied by me from the foot of said plat.

Further this deponent sayeth not.

JNO. N. GOTT.

47 Subscribed & sworn to before me & in my presence on the day, at the place, & within the hours in that behalf aforesaid.

[SEAL.] R. H. HOWARD,
Notary Public.

Which "Exhibit A," referred to in the foregoing deposition, is in the words and figures following, to wit:

(Township 49, north of range 16 west.)

SURVEYOR'S OFFICE,
St. Louis, January 28th, 1848.

The above plat of township 49, north of the base line, range 16, west of the fifth principal meridian, is correctly copied from the plat of said township on file in this office.

(Signed) F. R. CONWAY,
Surveyor of the Public Lands in the State of Illinois and Missouri.

The defendant then called as a witness LEBAND WRIGHT, who testified that he was register of the United States land office at Fayette, from 1853 to 1859, when the office was moved to Boonville; his successor was Brown; his predecessor was S. B. Todd, who succeeded Hampton L. Boon, about 1841; Hampton L. Boon had been register from 1825 to 1841, or thereabouts; Hampton L. Boon has been dead some years; Mr. McNair is dead; S. B. Todd is still alive, but
48 very old and very infirm. Witness has seen the plat of township 49, R. 16, in Howard County, in the books of the register at Fayette; this leaf containing this plat was loose, and detached from the book, and in order to preserve it, witness placed it in a drawer in the office; witness supposed he had given this detached leaf, as well as all the other papers of his office, to his successor; has no recollection of the turning over of this particular plat to his successor; witness has, since the beginning of this year, examined the books of the register's office at Boonville, and, together with Mr. Brown, and with the aid and permission of the incumbent, has made search in the office for this old leaf containing the plat of township 49, R. 16, in Howard County; it is not

to be found, and is either lost or destroyed: its place in the register's book is filled by a plat of the township furnished by the surveyor general. Shortly before the witness left the office, in 1859, Mr. Herndon, clerk of the county court of Howard County, brought to him the book now produced in court, purporting to contain a copy of the plats of the several townships in Howard County, as taken from the register's books, and requested him to compare them, and to place on them memoranda of any entries of land made in the county during witness' term of office; witness complied with this request; he found that these copies
49 corresponded with the originals in his office as to all transactions bearing date prior to 1853, and he noted on the plats now before the court all subsequent entries; as to this township 49, R. 16, witness remembers that the books of the register's office showed that in 1853 there was no land on it subject to entry; for this reason his examination of that plat was less thorough than of others; but he made the comparison in respect of every plat in the county, and of this among them, with the copy now in court; witness stated that it was the practice of the register's office to send monthly abstracts to the General Land Office at Washington of all lands entered or otherwise disposed of at the local land offices.

BROWN testified that he was the successor of Wright as register; he never saw the leaf containing the plat of township 49, R. 16, spoke*d* of by Wright; this leaf was missing from the plat-book when he took charge of the office; the book had become very much worn in its binding, and the leaves that remained were re-bound during his term; the leaf showing township 49, R. 16, was replaced by one furnished from the surveyor general's office; this showed the New Madrid locations, and the confirmations by the different acts of Congress, but contained no mention of any entries made at the land office; the tract-book of the register's office was also mutilated; witness, in company with
50 Wright, examined it at Boonville, during the last summer, and those plats showing section 17, T. 49 N., R. 16, were wanting in the tract-book, as well as in the plat-book; witness was register until 1861, and was succeeded by Boardman.

JAMES L. MCNAIR testified that he was deputy clerk of the county court of Howard County in 1853; before that time he had been a clerk in the office of the register, while his father held that office. By an act of the Mo. legislature, the clerk of the county court was directed to procure a copy of the township plats from the register's office, and witness was employed by Mr. Herndon, clerk of the county court, and by Judge Todd, the register, to make the copy; he made it very carefully; the book produced is the copy taken by him; he compared it carefully with the originals, and is satisfied that it is a true copy. Witness desires to be understood, however, that it is not a literal copy of any one book then in the register's office, in all particulars; as to entries, the plat-book in the register's office would contain on any particular subdivision of land the letters a. p., with a number; on another book would be seen the name corresponding to this number; and, in compiling this copy now before the court, the witness would write down the name instead of the number—thus translating it, and condensing two books or plats into one; the letters a. p. signified that the tract had been applied for and
51 paid for; in respect of reservations for schools, the words "reserved for schools" were written on the original plats in the register's on the tract so reserved. In respect of the copy of plat of township 49,

R. 16, witness testified that all the writing on it was his own, and he was satisfied that the plat was, at the trial, in the same condition as when he made it in 1853, except that one irregular line, evidently drawn by some one without the aid of a rule, appears across one of the subdivisions of land in a different section, from 17; witness remembers that there was no land in T. 49, R. 16, subject to entry in 1853; it had all been appropriated (according to the books of the register) to private ownership before that time; witness would not be able to speak as to the disposition of any particular tract, except by reference to the copy now in court.

A. J. HERNDON testified that for more than 25 years he had been clerk of the county court of Howard County. The book produced in court and testified to by McNair was the copy of the register's books, taken in 1853, for the use of the county. The witness here repeated the history of that copy as given by Mr. McNair, and added that when the land office was being removed to Boonville, in 1859, he took this book to Mr. Wright and requested him to compare it with his plats and bring it up to that date, as to entries made since 1853.

Witness produced this book in court, in obedience to a notice to
52 that effect from defendant.

Witness also produced a book which was one of the archives of the county of Howard, kept in the office of the clerk of the county court. It purported to be the history of the proceedings of Owen Rawlins, school commissioner. The first thing in the book was a copy of his appointment as commissioner.

Then followed a list of the school lands of the several townships of the county. This list was in the handwriting of H. L. Boon, at that time (in 1831) register of lands. It appeared from the entries that they were made in 1831–'2. Owen Rawlings had been dead many years.

The defendant then gave in evidence the copy of township 49, R. 16, in the words & figures following:

(Here follows plat marked page 53.)

54 The contents of the book of Owen Rawlings, including the list of school lands, in the handwriting of H. L. Boon, already appear in the third document put in evidence by defendant.

(The plaintiff objected to the introduction of this plat and book of Rawlings in evidence, on the ground that it was not the best evidence of the selection made for school purposes in lieu of lands in the 16th section previously disposed of by the United States, which the defendant could produce; the court overruled the objection & admitted the plat in evidence; to which the plaintiff excepted at the time.)

Pl'ff No. 4. In rebuttal, the plaintiff offered in evidence certified copy of the entries respecting the 49th township, range 16 west, as they are of record in the register's office, at Boonville, as follows:

Township No. 49 N., Range No. 16 W., (N. R.,) District of ——

No. of entry.	Designation of tract.	Section.	Township.	Range.	Quantity. Acres.	Quantity. 100ths.	Name of purchaser.	Price per acre.	Purchase money.	When purchased.
55 935	N. E. f'l ¼	1	49	16	111	51	Robert Payne	1 25	139 39	Dec. 8, 1823.
1421	N. W. f'l ¼	"	"	"	103	33	John Adams	9 05	936 95	Aug't 24, 1819.
	S. E. ¼ private claim of	"	"	"			James Clemens			
2544	S. W. f'l ¼	"	"	"	151	08	Obadiah Tindall	4 51	681 37	July 25, 1827.
2545	E. ½ of N. E. ¼	2	"	"	87	68	Obadiah Tindall	2 15	188 52	July 25, 1827.
2535	W. ½ of N. E. ¼	"	"	"	87	68	William Johnson	2 07	181 50	July 25, 1827.
933	N. W. f'l ¼	"	"	"	158	72	H. Stapleton & C. Carrole	1 35	214 27	Dec. 8, 1823.
	Bal. of section	"	"	"			Covered by private claims			
1233	N. f'l ½ of sect	3	"	"	101	87½	J. Brashears & C. Carrole	2 00	203 75	Sept. 26, 1821.
749	S. f'l ½ " sect	"	"	"	101	87½	J. Brashears & C. Carrole	2 00	203 75	Mar. 5, 1819.
	Bal. of section	"	"	"			Covered by private claim			
803	N. W. f'l ¼ &	4	"	"			Harvie Hawkins			
	S. W. f'l ¼	"	"	"	21	54	Stuart & Berry	2 00	43 08	May 17, 1819.
	Bal. of section	"	"	"			Covered by private claims			
56 1916	N. W. ¼	5	"	"	165	80	William White	2 00	331 60	Jan'y 20, 1820.
	E. ½ of section						Covered by private claims			
1656	W. ½ of S. W. ¼	"	"	"	80	00	Joseph Cooley	2 00	160 00	Sept. 17, 1821.
351	E. ½ of S. W. ¼	"	"	"	80	00	John Cooley	2 00	160 00	May 20, 1819.
1662	N. E. ¼	6	"	"	159	64	Marion Duren	4 50	718 38	April 6, 1819.
1561	N. W. f'l ¼	"	"	"	113	17	John Elkins	1 25	141 46	March 5, 1825.
550	S. E. ¼	"	"	"	160	00	John Locke	2 00	320 00	Feb. 1, 1820.
49	S. W. f'l ¼	"	"	"	125	08	John Ogin	2 25	281 43	Feb. 16, 1819.
325	N. E. ¼	7	49	16	160	00	Isaac Drake	2 00	320 00	May 20, 1819.
529	N. W. ¼	"	"	"	131	64	Andrew Carson	2 00	263 28	Feb. 3, 1820.
	S. E. ¼	"	"	"	160	00	John Elliott	2 00	320 00	Patented July 30, 1821.
449	S. W. ¼	"	"	"	130	08	Heirs of Lindsey Carson	2 00	260 16	Jan'y 28, 1820.
4531	E. ½ of N. E. ¼	8	"	"	80	00	Joseph Cooley	2 00	160 00	May 20, 1819.
1628	N. p't N. W. ¼, & W. ½ of N. E. ¼	"	"	"	140	25	Nicholas S. Burckhart	2 00	280 50	Aug't 28, 1821.
672	E. ½ of S. E. ¼	"	"	"	80		Heirs of Jonathan Todd	2 00	160 00	Jan'y 24, 1820.
1458	W. ½ of S. E. ¼	"	"	"	80		Heirs of Jonathan Todd	2 00	160 00	Sept. 24, 1821.
554	S. p't N. W. ¼, & S. W. ¼	"	"	"	259	75	Perrin Cooley	2 00	519 50	May 20, 1819.
115	S. E. ¼, and E. ½ N. E. ¼	9	"	"	240	00	Abner Johnson	2 00	480 00	May 10, 1819.
57 4357	N. W. ¼, and W. ½ N. E. ¼	"	"	"	240	00	Joseph Moody	2 00	480 00	May 10, 1819.
85	S. W. ¼	"	"	"	160	00	Davis Todd	2 00	320 00	Jan'y 26, 1820.
492	S. E., ½ & E. ½ of N. E. ¼	10	"	"	240	00	Joseph & David P. Boggs	2 00	480 00	June 19, 1819.
1085	N. W. ¼, & W. ½ of N. E. ¼	"	"	"	240	00	Joseph & David P. Boggs	2 00	480 00	Sept. 14, 1821.
1374	E. ½ of S. W. ¼	"	"	"	80	00	Jere. Kingsberry	1 53	122 40	Oct. 30, 1824.
4464	W. ½ of S. W. ¼	"	"	"	80	00	Jacob Kortz	1 25	100 00	Mar. 14, 1831.
	N. E. ¼	11	"	"	160		Covered by private claim of David Johnson			
518	N. W. ¼ / S. E. ¼ / S. W. ¼	"	"	"	480	00	Ja's & Jesse Turner	2 00	960 00	Jan'y 31, 1820.

TOWNSHIP No. 49 N., RANGE No. 16 W., (N. R.,) DISTRICT OF———.—Continued.

No. of entry.	Designation of tract.	Section.	Township.	Range.	Quantity. Acres.	Quantity. 100ths.	Name of purchaser.	Price per acre.	Purchase money.	When purchased.
1066	N. E. ¼	12	"	"	152	30	Martin Little	1 25	190 38	Dec. 12, 1823.
1387	N. W. ¼	"	"	"	152	30	Gabriel Long	4 51	686 87	Feb. 16, 1819.
1819	S. E. ¼	12	49	16	154	90	Talton Whitlock	4 03	628 89	March 27, 1819.
1725	S. W. ¼	"	"	"	154	90	W'm V. Rector	6 00	929 40	May 5, 1819.
928	E. ½ N. E. ¼	13	"	"	80	00	Ambrose Marr	1 25	100 00	Dec. 8, 1823.
732	W. ¼ N. E. ¼	"	"	"	80	00	John Farris	4 98	398 40	Feb. 16, 1819.
58 929	E. ½ N. W. ¼	"	"	"	80	00	Gerard Robinson	1 25	100 00	Dec. 8, 1823.
930	W. ¼ N. W. ¼	"	"	"	80	00	Gerard Robinson	1 25	100 00	Dec. 8, 1823.
934	E. ½ of S. E. ¼	"	"	"	80	00	William Hunt	1 25	100 00	Dec. 8, 1823.
1839	W. ¼ S. E. ¼	"	"	"	80	00	Martin Farris	1 25	100 00	Jan'y 10, 1826.
731	E. ½ S. W. ¼	"	"	"	80	00	Philip Turner	1 25	100 00	Dec. 8, 1823.
932	W. ½ S. W. ¼	"	"	"	80	00	Philip Turner	2 43	194 40	Dec. 8, 1823.
104	N. E. ¼	14	"	"	160	00	Abraham Groom	2 00	320 00	Jan'y 17, 1820.
917	E. ½ of N. W. ¼	"	"	"	80	00	W'm E. Rucker	2 76	220 80	Dec. 8, 1823.
918	W. ½ N. W. ¼	"	"	"	80	00	W'm E. Rucker	3 01	240 80	Dec 8, 1823.
1368	E. ½ S. E. ¼	"	"	"	80	00	Gerard Robinson	1 25	100 00	Oct. 30, 1824.
1369	W. ¼ S. E. ¼	"	"	"	80	00	Gerard Robinson	1 25	100 00	Oct. 30, 1824.
925	E. ½ S. W. ¼	"	"	"	80	00	Owen Rawlings	1 39	111 20	Dec. 8, 1823.
926	W. ½ S. W. ¼	"	"	"	80	00	Owen Rawlings	1 33	106 40	Dec. 8, 1823.
924	E. ½ N. E. ¼	15	"	"	80	00	Owen Rawlings	1 68	134 40	Dec. 8, 1823.
933	W. ½ N. E. ¼	"	"	"	80	00	James Turner	1 25	100 00	Dec. 8, 1823.
	N. W. ¼	"	"	"	160	00	Edw'rd H. Durkee, A. C. scrip No. 720	.....	.....	September 18, 1868.
452	E. ½ S. E. ¼	"	"	"	80	00	Thomas Campbell	5 60	448 00	Feb. 16, 1819.
59 1147	W. ½ S. E. ¼	"	"	"	80	00	Thomas Campbell	5 60	448 00	Sept. 12, 1821.
118	S. W. ¼	"	"	"	160	00	Levi Todd	2 00	320 00	Feb. 12, 1820.
1628	E. ½ S. E. ¼ & N. E. ¼	16	"	"	240	00	Christ'r Burckhart	2 00	480 00	Feb'y 12, 1820.
1808	N. W. ¼ & W. ½ of S. E. ¼	"	"	"	240	00	R. & E. Barton & C. Richardson	2 00	480 00	May 13, 1819.
	* N. E. ¼	17	49	16	160	00	Albert C. Widdicombe, A. C. scrip No. 1535	.....	.....	October 13, 1866.
	N. W. ¼	"	"	"	.....	.....	Covered by private claim of Lewis St. Aubin	.....	.....	
	S. E. ¼	"	"	"	160	00	James Creson	2 00	320 00	May 10, 1819.
607	E. ½ S. W. ¼	"	"	"	80	00	Susannah Mullins	2 00	160 00	Ap'l 6, 1819.
1888	W. ½ S. W. ¼	"	"	"	80	00	Susannah Mullins	2 00	160 00	Sept. 20, 1821.
528	N. E. ¼	18	"	"	160	00	John Elliott	5 15	824 00	Feb'y 16, 1819.
2030	N. W. ¼	"	"	"	130	96	Sam'l M. Hughes	1 25	163 70	Oct. 5, 1826.
1476	E. ½ S. E. ¼	"	"	"	80	00	Owen Rawlings	1 25	100 00	Nov. 29, 1824.
1659	W. ½ S. E. ¼	"	"	"	80	00	Neal Riddell	1 25	100 00	Sept. 29, 1825.
1205	S. W. fl ¼	"	"	"	127	40	Samuel Ringo	1 25	159 25	June 23, 1824.
60 748	N. E. ¼	"	"	"	320	00	S. Brown, s'r, & Robert Brown	2 00	640 00	May 15, 1819.
	S. E. ¼	"	"	"						
2922	N. W. ¼	"	"	"	124	40	David Todd	1 25	155 50	Feb'y 4. 1824.
3794	S. W. fl ¼	"	"	"	120	12	John Lowthian	1 25	150 15	Feb'y 24, 1830.

149	N. E. ¼	20	"	"	160	00	William Pipes	2 00	320 00	May 20, 1819.
	* N. W. ¼	"	"	"			Samuel Masters, covered by private claims			
	* S. W. ¼	"	"	"			John Laferwich, covered by private claims			
1663	S. E. ¼	"	"	"	160	00	Heirs of Reuben Fugitt	2 00	320 00	May 24, 1819.
107	N. E. corner N. W. ¼, &	21	"	"	260	50	Peter Creson	2 00	521 00	May 21, 1819.
	N. E. ¼	21	"	"						
1722	S. W. ¼ &	"	"	"	219	50	Robert Wilds	2 00	439 00	Jan'y 23, 1820.
	S. pt of N. W. ¼	"	"	"						
75	S. E. ¼	"	"	"	160	00	John Creson	2 00	320 00	Jan'y 24, 1820.
524	E. ½ N. E. ¼	22	49	16	80	00	White, Iles & Wells	2 25	180 00	June 10, 1819.
1336	W. ½ N. E. ¼	"	"	"	80	00	Elijah Iles	2 25	180 00	Sept. 15, 1821.
	* N. W. ¼	"	"	"	160	00	Albert C. Widdicombe, A. C. scrip No. 1533			Oct. 13, 1866.
	* S. E. ¼	"	"	"			Selected for schools			
61 808	S. W. ¼	"	"	"	160	00	Harvey, Hawkins, Stewart, & Berry	3 28	524 80	May 17, 1819.
1873	N. E. ¼	23	"	"	160	00	Lilburn W. Boggs	2 00	320 00	May 18, 1819.
2754	E. ½ N. W. ¼	"	"	"	80	00	Henry Kraus, j'r	1 25	100 00	Oct. 18, 1827.
2274	W. ½ N. W. ¼	"	"	"	80	00	William Seybert	1 25	100 00	March 13, 1827.
940	S. E. ¼	"	"	"	160	00	James Ludlow	2 00	320 00	Feb. 16, 1819.
871	E. ½ S. W. ¼	"	"	"	80	00	Nathan R. Todd	2 00	160 00	May 18, 1819.
1809	W. ½ S. W. ¼	"	"	"	80	00	Henry Gore	2 00	160 00	Sept. 29, 1821.
1938	N. E. f'l ¼	24	"	"	149	86	William Hunt	4 00	599 44	Mar. 15, 1819.
2494	E. ½ N. W. ¼	"	"	"	80	00	Daniel Rector	1 55	124 00	July 25, 1827.
2658	W. ½ N. W. ¼	"	"	"	80	00	Samuel Teeter	1 25	100 00	Aug. 3, 1827.
	S. E. ¼	"	"	"			A. Randall, covered by private claims			
783	S. W. ¼	"	"	"	160	00	W'm V. Rector	2 65	424 00	May 5, 1819.
	N. E. ¼	25	"	"			Rosa Bowie, covered by private claims			
2751	N. W. ¼	"	"	"	160	00	David R. Drake	1 25	200 00	Oct. 16, 1827.
4536	Fr'l S. E. ¼ & S. W. ¼	"	"	"	191	31	Charles Drake	1 25	239 14	April 15, 1831.
3630	E. ½ of N. E. ¼	26	"	"	80	00	Christ'r B. Richardson	1 25	100 00	Sept. 14, 1829.
62 3079	W. ½ N. E. ¼	"	"	"	80	00	William Scott	1 25	100 00	July 26, 1828.
7985	N. ½ N. W. ¼	"	"	"	80	00	Andrew Hutchison	1 25	100 00	Jan'y 22, 1835
7972	S. E. ¼ N. W. ¼	"	"	"	40	00	Azor R. Anderson	1 25	50 00	Jan'y 19, 1835.
7965	S. W. ¼ N. W. ¼	"	"	"	40	00	Daniel Rector	1 25	50 00	Jan'y 17, 1835.
3758	S. E. f'l ¼	26	49	16	74	62	James Alcorn	1 25	93 28	Dec. 3, 1829.
3885	S. W. f'l ¼	"	"	"	60	80	Thomas A. Smith	1 25	76 00	Aug. 7, 1829.
	* All of section	27	"	"	640	00	James Reynolds, covered by private claim.			
46	N. E. ¼ &	28	"	"	240	00	Daniel Durbin	2 00	480 00	Jan'y 17, 1820.
	E. ½ N. W. ¼	"	"	"						
2123	N. p't of S. E. ¼	"	"	"	91	64	Henry Kuous	1 25	114 55	Nov. 25, 1826.
1692	N. ½ N. W. ¼, &	"	"	"	240	00	James Alcorn	2 00	480 00	Feb. 5, 1820.
	S. W. ¼	"	"	"						
54	N. E. ¼	29	"	"	480	00	W. Monroe & J. Douglass	2 00	960 00	Jan'y 20, 1820.
	S. E. ¼	"	"	"						
	S. W. ¼	"	"	"						
92	N. W. ¼	"	"	"	160	00	Daniel Crump	2 00	320 00	May 13, 1819.
333	N. ½ of N. E. ¼	30	"	"	80	00	David McClain	2 00	160 00	Feb. 15, 1820.
63 888	S. E. ¼, &	"	"	"	240	00	John Stephenson	2 00	480 00	May 11, 1819.
	S. ½ N. E. ¼	"	"	"						
1723	N. W. ¼	"	"	"	115	78	Heirs of David McClain	2 00	231 56	Aug. 31, 1821.
1863	S. W. ¼	"	"	"	109	72	Heirs of Jno. Smith	2 00	219 44	Jan'y 25, 1820.
37517	E. f'l S. W. ¼, & W. f'l ½ S. E. ¼ (Island 29.)	"	"	"	118	21	Lewis C. Railey, s'r	1 25	147 76	Mar. 17, 1858.

TOWNSHIP No. 49 N., RANGE No. 16 W., (N. R.,) DISTRICT OF———.—Continued.

No. of entry.	Designation of tract.	Section.	Township.	Range.	Quantity. Acres.	Quantity. 100ths.	Name of purchaser.	Price per acre.	Purchase money.	When purchased.
37518	N. W. f'l ¼, & W. f'l ¼ S. W. ¼ (Island 29.)	"	"	"	112	07	Lewis C. Railey, j'r	1 25	140 09	Mar. 17, 1858.
1897	N. E. f'l ¼	31	"	"	143	06	David Kinkead	2 00	287 20	June 11, 1819.
1026	N. W. ¼	"	"	"	103	04	Joseph Fields	2 00	206 08	June 11, 1819.
	*S. E. ¼	"	"	"			William Nash, covered by private claim.			
1715	N. W. ¼, 6-48-16, & S. W. ¼	"	"	"	203	70	Matthew Kinkead	2 00	407 40	June 11, 1819.
4740	N. W. f'l ¼	32	49	16	148	08	Philip H. Thompson	1 25	185 85	Aug. 16, 1831.
	*Bal. of section	"	"	"			Covered by private claims.			
	*All of section	33	"	"			Covered by private claims.			
48900	S. E. ¼ S. E. ¼	"	"	"	10	37	Albert C. Widdicombe	1 25	12 91	September 8, 1869.
5226	S. W. ¼	34	"	"	66	65	Thomas Barnes	1 25	83 31	Mar. 3, 1832.
64 7964	Fr'l S. E. ¼	35	"	"	14	20	Zachariah Benson	1 25	17 75	Jan'y 17, 1835.
1086	N. E. f'l ¼	36	"	"	69	24	Nath'l Hutchison	1 25	86 55	Dec. 22, 1823.

* Written in red ink.

UNITED STATES LAND OFFICE,,
Booneville, Mo., September 30, 1870.

I, William Whist, register of the land office at Boonville, Missouri, do hereby certify that the foregoing abstract is a true and correct copy of the original entries in township 49 N., of range 16 W., (N. R.,) as shown by the records of this office,

W'M WHIST, *Register.*

65 Pl'ff No. 5. Also, a letter of the Commissioner of the General Land Office, dated August 25, 1868, to the register, &c., of the Boonville district, and the reply thereto, dated Sept. 16, 1818.

(Copy.)

Letter from Com'r Gen'l Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August* 25, 1868.

REGISTER & RECEIVER, *Boonville, Missouri.*

GENTLEMEN: A letter has been received at this office from A. C. Widdicombe, esq'r., in which he states that "the N. E. ¼ of sec. 17 and N. E. ¼ of sec. 22, t'p 49 N., R. 16 W., is claimed as school land under act of May 20, 1826."

As our records do not show that these tracts have been selected under said act, you will please examine the books of your office, and report the status of said tracts as shown thereby.

Very respectfully,
(Signed) JOS. S. WILSON,
Commissioner.

(Copy.)

Reply from register land office, Boonville, Mo.

LAND OFFICE, BOONVILLE, MO., *Sept.* 16, 1868.

66 SIR: Referring to your letter of Aug. 25th, 1868, in which you ask for the "status" on our books of the N. E. ¼ sec. 17 and N. W. ¼ *q'r* sect. 22, T. 49, R. 16, which, you allege, is claimed as "school lands," I have to say that an examination of the tract-book shows both these tracts to have been entered with A. C. S. by A. C. Widdicombe, October 13th, 1866. No other entry of said tracts appear on our records. The plat we have of that T. & R. has no entries marked upon it. The old plat, it appears, was destroyed many years ago, and the one we have is a "copy" from the surveyor general's office, and without entries.

Very respectfully,
(Signed) G. H. BAKER, *Reg.*

Hon. Commissioner Gen'l Land Office.

U. S. LAND OFFICE, BOONVILLE, MO., *Nov. 3d*, 1870.

I, E. G. Evans, register of the general land office, at Boonville, Mo., do hereby certify the foregoing letters to be a true and correct copy from the originals on file and of record in this office.

E. G. EVANS, *Register.*

This was all the evidence.

The plaintiff thereupon asked the following declaration of the law:

67 *Pl'ff's instructions, No.* 1.

1. The court, sitting as a jury, is requested to declare the law of this case to be, that the United States did not part with its title to the land in question prior to the issuing of the patent certificate to Albert C.

Widdicombe read in evidence; and if it believe, from the evidence, that said patent certificate and the deed from said Widdicombe and wife to the plaintiff are genuine, and that the defendant held possession of the premises as alleged, then the plaintiff is entitled to recover.

Pl'ff's instructions, No. 2.

2. Neither the act of Congress March 6, 1820, admitting Missouri into the Union, nor any subsequent act, operated as a grant per se to the State, or to any of the inhabitants thereof, the northeast quarter of section 17, in township 49, of range 16, west of the 5th principal meridian.

To divest the United States of its title thereto it is necessary that not only the 16th section of said township, or some of its subdivisions, have been sold or otherwise disposed of by the United States Government, but, also, that said N. E. ¼ of 17 should have been designated and set apart, according to law, in lieu of a similar quantity of the 16th section, sold or disposed of by the Government prior to March 6, 1820.

No such designation or setting apart has been shown by the evidence.

68 Which the court refused to give, and to which refusal the plaintiff at the time excepted.

The defendant asked the following declaration of law, which the court gave as follows:

Def't instructions.

If the court, sitting as a jury, shall believe, from the evidence, that, prior *prior* to the 6 March, 1820, four hundred and eighty acres of section sixteen, in township 49, in range sixteen, had been disposed of and sold by the United States of America, & that the register & receiver of the United States land office, at Fayette, under the act of 3 March, 1823, to satisfy in part the claim of the State of Missouri for section 16, reserved and selected the northeast quarter of section 17, in township 49, R. 16, and a descriptive entry of said reservation and selection was made, and appeared on the books of the register of the United States land office, at Fayette, specifying the township in which, and the use of which the selection was made, but that the leaf containing the memorandum of such selection & reservation has been lost or destroyed; and that in 1832 the northeast quarter of section 17, T. 49 N., R. 16 W., was sold by the State of Missouri as school land, to James Hughes & Braxton C. Fugitt, and patented to them on the 14 November, 1832, by the said State of Missouri; that the defendant claims under the patentees by derivative title, and had been in possession of the N. E. 17, 49 N., R. 16 W., since the year 1839, claiming the same as his own; then plaintiff cannot recover.

69 To the giving of which the plaintiff at the time excepted, and that the matters aforesaid may appear of record the plaintiff tenders this his bill of exceptions, and prays that the same may be signed and sealed, which is done, this 12th day of November, A. D. 1870.

SAMUEL TREAT, *Judge.* [SEAL.]

And, on the 12th day of November, 1870, said plaintiff, having been allowed a writ of error in said case to the Supreme Court of the United States, filed the following bond to wit:

Know all men by these presents that we, Albert C. Widdiecombe, of

Boonville, Missouri, as principal, and Robert F. Wingate, of St. Louis, Missouri, as surety, are held and firmly bound unto Samuel T. Hughes in the full and just sum of five hundred dollars, to be paid to the said Samuel T. Hughes, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twelfth day of November, in the year of our Lord one thousand eight hundred and seventy. Whereas, lately, at the October term, 1870, of the circuit court of the United States for the districts of Missouri, in a suit depending in said court between Robert G. Hedrick, plaintiff, and Samuel T. Hughes, defendant, judgment was rendered against the said Robert G. Hedrick, plaintiff aforesaid, and the said plaintiff, Robert G. Hedrick, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, Samuel T. Hughes, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the third Monday of December next:

Now, the condition of the above obligation is such, that if the said Robert G. Hedrick shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

ALBERT C. WIDDIECOMBE. [SEAL.]
ROBERT F. WINGATE. [SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT, *Judge.*

70 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the records and proceedings in case of Robert G. Hedrick, plaintiff, against Samuel T. Hughes, defendant, ejectment, as fully as the same remains on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said districts, this twenty-eight day of November in the year of our Lord eighteen hundred and seventy.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

71 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, at the October term, 1870, of said court, between Robert G. Hedrick, plaintiff, and Samuel T. Hughes, defendant, a manifest error hath happened, to the great damage of the said Robert G. Hedrick, plaintiff aforesaid, as by his complaint appears, we, being willing that error, if any hath been,

should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the third Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twelfth day of November, in the year of our Lord one thousand eight hundred and seventy.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge.*

72 UNITED STATES OF AMERICA,
Districts of Missouri, ss :

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a transcript of the record and proceedings in the within entitled case.

Witness my hand, at office in the city of St. Louis, in said districts, this 28th day of November, A. D. 1870.

BEN. F. HICKMAN,
Clerk of said Circuit Court.

73 The United States of America to Samuel T. Hughes, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of Missouri, wherein Robert G. Hedrick is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court of the United States for the districts of Missouri, this twelfth day of November, in the year of our Lord one thousand eight hundred and seventy.

SAMUEL TREAT.

74 I acknowledge service of this citation at St. Louis, Missouri, this twelfth day of November, 1870.

THO'S T. GANTT,
Attorney for Samuel T. Hughes.

(Indorsement on cover :) No. 419. Robert G. Hedrick, plaintiff in error, vs. Samuel T. Hughes. Missouri C. C. U. S. Filed 17th December, 1870.

IN THE

Supreme Court of the United States.

No. 206.—December Term, 1871.

ROBERT G. HEDRICK,
Plaintiff in Error,
vs.
SAMUEL T. HUGHES.

Error to the Circuit Court of the United States for the District of Missouri.

Brief of Counsel for Plaintiff in Error.

M. BLAIR,
F. A. DICK,
Of Counsel for Plaintiff.

Pearson, Printer, corner 9th & D sts., Washington, D. C.

IN THE

Supreme Court of the United States.

No. 206.—December Term, 1871.

ROBERT G. HEDRICK, Plaintiff in Error, vs. SAMUEL T. HUGHES. } Error to the Circuit Court of the United States for the District of Missouri.

Brief of Counsel for Plaintiff in Error.

STATEMENT.

This is an action of ejectment, brought on the 16th of March, 1870, by the plaintiff in error, in the Circuit Court of the United States for the District of Missouri, to recover possession of the N. E. ¼ of section 17, in township 49, range 16, north of the Missouri river, situated in Howard county, Missouri. In support of his title the plaintiff gave in evidence a patent to A. C. Widdicombe, (p. 5,) dated June 1, 1868, and a deed from Widdicombe to himself, dated 6th September, 1869.—(p. 6.) No point was made on the regularity of the plaintiff's title. The questions in the case arose wholly on the defendant's title.

The defendant claims that the evidence he submitted shows that the land in question was assigned to the state of Missouri for the support of schools, in lieu of a portion

of the 16th section of said township, which had been disposed of prior to the 6th day of March, 1820.—(See instruction asked by defendant and given by court, p. 28.)

The defendant's evidence consists—

1. Of transcripts from the General Land Office of unsigned papers purporting to be patents to N. S. Burckhartt, one dated 10th August, and the other 10th November, 1825, (pp. 70–8,) for 480 acres of the 16th section of township 49.

2. Copy of proceedings by which Owen Rawlins was appointed County Commissioner of Howard county by the county court, to sell school lands, and of an order of the court to sell the 16th section.—(pp. 9, 10, 11.) The report of Rawlins (11, 12, 13, 14) showing the sale of 880 acres in township 49, and, among other tracts, of the east half of the N. E. ¼ of section 17 to Braxton C. Fugitt, and of the west half of quarter to James Hughes. Patents by the state to Fugitt (p. 1) and to Hughes, and conveyances to defendant.—(p. 17.)

3. Possession by the defendant for thirty-one years.—(p. 18.)

4. Evidence (pp. 19–20) that pp. 375–6–7–8 of vol. 3 of tract book, in the United States Land Office at Booneville, which contained the record of the disposition of the land in township 49, range 16, north of the Missouri river, are missing.

5. Evidence of Leland Wright, register from 1853 to 1859, that the leaf of the plat book containing township 49 was detached, during his term of office, from the book and was kept by him in a separate place from the book; that he and Mr. Brown, his successor in office, recently searched the office but failed to find this leaf. Its place is now supplied by plat from Surveyor General's office. (See p. 20, where it will be seen that this *was furnished January* 28, 1848, *five years before the witness came into office.*) In 1859 witness compared a book, now produced in court, purporting to contain copies of the plats

of the townships situate in that county, taken from the register's books, and found that these corresponded with the originals in his office. This book was a compilation made by the county officer. It was the practice of the register's office to send monthly abstracts to the General Land Office as to all lands entered or otherwise disposed of at the local office.—(p. 20.)

Brown (p. 20) never saw the loose leaf spoken of by his predecessor in office. When he and witness examined office last summer the leaf in tract book as well as in plat book, relating to township 49, was missing.

McNair (p. 21) was the deputy clerk of the county court, who made the book produced in court from which the plat referred to (p. 22) was taken. It is not a copy of the plat book. Where in any subdivisions of land on the plat book the letters "a," "p," with a number appeared, (signifying that the land had been applied for and paid for,) on another book would be seen the name corresponding to the number. Witness inserted the name obtained from the other book, and omitted the number on the plat book. "Witness desires to be understood that it is not a literal copy of any one book then in the register's office in all particulars; * * and in compiling this copy now before the court, the witness would write down the name instead of the number, thus translating it and condensing two books or plats into one." In respect to reservations for schools, the words "reserved for schools" were written on the original plats. Herndon county clerk identified the book as that made by McNair, and produced it in court.

The plaintiff in rebuttal gave in evidence the certified copy of entries in township 49, R. 16 N. of Missouri river, from the register's office, (p. 23,) and a letter from the Commissioner of the General Land Office, (p. 27,) stating that the records of that office did not show that the land in question had been selected as school lands.

The court (p. 28) decided that if it appeared from the evidence that prior to 6th March, 1820, 480 acres of sec. 16 had been disposed of by the U. S. and that the register and receiver, in satisfaction of the claim of the state for that section, had reserved and selected the land in question, and a descriptive entry of said selection was made, and appeared on the books of the register, specifying the tract *and the township in which as that for the use of which the selection was made*, but that the leaf containing the memorandum of such selection and reservation has been lost or destroyed; and that in 1832 the land in question was sold by the state to persons under whom defendant has held possession since 1839, the plaintiff was not entitled to recover, and the court, sitting as a jury, under this ruling found for defendant. The plaintiff excepted in due form to the decision of the court, and brought the case by writ of error to this court.

POINTS.

(I.) The possession of the defendant, so much relied on in the circuit court, and which seems to have controlled its decision, is no bar to this suit.

The only question here is whether defendant has shown a title prior in date to that made by the government to the plaintiff. Neither the possession shown, or the proceedings of the county court or county commissioner, or the fact that part of his report was written by Hampton L. Boon, or the patents for the state, tend to prove such a grant.

(II.) Title can only emanate from the U. S. by record made by its own agents acting in their official character.

The law governing this case is the 1st section of the act of 3d March, 1823, (U. S. Stat., vol. 3 p. 787,) which is as follows: "That in all cases in which section number

sixteen, in any township within the State of Missouri, has been sold or otherwise disposed of, it shall be the duty of the register and receiver of the respective land office, in whose district such land may lie, so soon after the passage of this act as may be, to select other lands equivalent thereto *from any of the unappropriated lands of the United States in that state*, including the residue of such section when only a part of it has been disposed of and the value of the residue is not materially diminished by such disposition, and as nearly contiguous to such 16th section as may be; *and a descriptive entry of such selected lands shall be made on the books of the register*, specifying as well the township in which, *as that for the use of which, the selection shall have been made*, and the lands thus selected and located are hereby granted to said state for the use of the inhabitants of the respective townships for the use of schools, instead of such sixteenth sections so sold or otherwise disposed of."

Has the defendant shown by competent proof that the register and receiver of the land office at Fayette, after the passage of this act selected the land here in controversy as the equivalent of so much of some 16th section which had been disposed of, and made "a descriptive entry of this selection on the books of the register, specifying as well the township in which, as that for the use of which, the selection was made?"

(1.) The books of the register, and those of the General Land Office, which are transcripts of those made monthly, (Wright's testimony, p. 21; see also instructions of General Land Office, 2d vol. Laws and Instructions,) contains no record of the selection of the tract in question for such a purpose.

(2.) To supply such a record, proof is given that the leaves of the tract and plat books, where this entry should appear in the register's office, have been lost, and an abstract made from these books by McNair, a deputy county clerk, in 1853, was given in evidence to show the contents

of the lost leaves. But this book, the witness expressly states, is not a copy of any book in the register's office. It is made up from a series of township plats, with the names of the persons to whom the patents issued for the several subdivisions written on them, with the dates of the patents in some instances. In no instance is the date of an entry given in McNair's book, as may be seen by a comparison of his plat (p. 22) with the certified copy of the entries from the register's office.—(p. 23.) On the subdivision of the plat corresponding with that here in question, the words "reserved for schools" are written, with no date and with no specification for account of which, if any, township the reservation was made. McNair testifies to making this book of memoranda from the register's books for county purposes, and Wright compared it.

(3.) Taking this testimony in its strongest sense for defendant, and assuming that the plat in evidence was made from the lost leaf, (which it certainly was not, as that leaf was lost prior to 1848. It was supplied by a transcript from the Surveyor General's office, which is certified 28th January, 1848. This is conclusive that the lost leaf was never seen by Wright or McNair,) and assuming that the words "reserved for schools" appeared on the plat in the register's office in 1853; this is not the record proof required by the law to make it an operative grant to the state of the land in question.

First. Because the *authenticity* of this memorandum is not established by the testimony. The fact that such a memorandum existed on that part of the leaf which represented this land does not, of itself, prove that it was put there by the register or by his authority, and it is not said by the witnesses that it was in the proper hand-writing of those officers. Its authenticity is indeed negatived by the absence of any entry of this selection in the proper book of entries, which we remark upon further on.

Second. Because the memorandum is without date, and no clue is given by the testimony to give it an

approximate date, and yet it was only after the passage of the act above quoted that there was any authority in the register and receiver to make the reservation.

Third. But if it be assumed that these words were written by the register on the lost leaf of the plat book after the date of the act, such a notation does not constitute "a descriptive entry of the land in the books of the register, specifying the township in which, as (well as) that, for the use of which, the selections shall have been made."

It is convenient when a subdivision is sold, or otherwise disposed of, to note the fact on the plat book, which consists of a series of plats furnished by the Surveyor General. But the *books* properly called "the register's books" are the "Register of Entries" and the "Tract Book." In the first of which each day's business is entered by the register in the order of its transaction, as in a merchant's day book. The "Tract Book" is a sort of ledger, in which these daily transactions are posted under the head of the appropriate township. Thus, the certified copy from the register's office, offered as rebuttal by plaintiff, (p. 23,) is the posted account from the register of all the transactions in that office in relation to township 49, range No. 16 W., north of the Missouri river. When the law speaks of a descriptive entry being made by the register, it refers, of course, to an entry on the books where alone such entries are made. Writing the words "*reserved for schools*" on the plat of a section is not, of itself, the act of making a descriptive entry of the section. Nor does it purport to be the record of the selection by the land officers. It is without date and informal in all respects. The plat book is not a book of record. It is, at most, only an index to the register's record. That this is its character is obvious. But, if proof be wanting, the fact is established by McNair's testimony. He says, "as to entries, the *plat book* in the register's office would contain on any particular subdi-

vision of land the letters 'a,' 'p,' with a number. *On another book* would be seen the name corresponding with the number, and in compiling this book the witness would write down the names instead of the number," &c. Hence, it appears that on the plat book only the numbers of the entries were noted, and reference had to be made to the books of entry of the register, or tract book, to obtain the names of purchasers, the dates, and the other particulars constituting *the record* of the entry. This is also established by the fact that there is no record of this memorandum from the plat book to be found in the General Land Office. If that book had been a book of record from which the monthly transcripts were made, which were required by the regulations of the department, the memorandum taken from that book by McNair would also be found in the General Land Office.

The plat book, it is thus demonstrated, was not a book on which descriptive entries were made at all, only abbreviations and numbers were put on it to indicate that entries were made which were to be found in other books, from one of which McNair states that he got the names of the purchasers and such other particulars of the entries as were required for the county purposes.

But no selection of this land is proved to have been found on these books where alone entries were made. It is testified, indeed, by Leland Wright and Brown and others, that that part of the tract book in which the record of these selections would be found was also wanting, but this statement is disproved and the existence of the record is conclusively established by the certified copy, given in evidence by the plaintiff, (p. 23,) showing in detail every entry in the township.

When we have a certified copy from the register's office of the record of all the transactions supposed to have been recorded in the pages alleged to be missing by the witnesses, and find in the copy a full and complete statement of the land officers with respect to every subdivision of

the township, this document fully disproves the testimony of the witnesses on the point of its loss, and is conclusive testimony as to what was done by the register with respect to every subdivision embraced in the record.

(4.) But the memorandum is insufficient, even if it be adjudged authentic, and to be of itself proof of the record of "a descriptive entry on the books of the register" of the land in question, because it does not also specify the township for the use of which the selection was made.

This specification is expressly required by law to be recorded on the books of the register. In this way only, can it be shown for what township the selection is made. That it is necessary to the validity of the selection, that this be shown, is conceded by the defendant's counsel and by the circuit court, in the instruction asked by the counsel and given by the court. The instruction says, that "if the court, sitting as a jury, shall believe from the evidence that prior to the 6th of March, 1820, 480 acres of 16, in township 49, R. 16, had been disposed of and sold by the U. S. of America, and that the register and receiver, * * * * to satisfy in part the claim of the state, for that section reserved and selected the N. E. quarter of section 17, in township 49, R. 16, *and a descriptive entry of said entry and selection was made and appeared on the books of the register of the United States Land Office at Fayette, specifying the township in which, and (that for) the use of which the selection was made,*" &c.

It cannot be pretended that the entry contains the specifications thus declared by the circuit court itself to be indispensable to its validity.

Nor do the patents to Burckhartt, relied upon to show that such a deficiency existed in the 16th section of the 49th township on the 6th March, 1820, and that the selection of the land in controversy was made to supply that deficiency, prove or tend to prove either fact. The patents are both dated in 1825, and the register and receiver were at liberty to select any land in the state to supply

the deficiency, on any 16th section, and, hence, we can as well suppose the selection to have been for any other 16th section as for that of the 49th township, even if that was proved to have been disposed of.

It was for this reason that the specification of the township on account of which the selection was made was required by law to be inserted in the record of the selection, and, unless it was done, neither the local or General Land Office could know whether more or less land than their complement had been selected for the schools. The burden of proof is on defendant to show that the land in section 16 had been sold by the United States, and that the statute was complied with in such case by the register and receiver in selecting the lands in question in lieu of so much in section 16. The proof offered is only of what the *county records*, under *state law*, showed, and does not show what the *United States records* were, and to this special exception was made by plaintiff, thus: "The plaintiff objected to this plat and book of Rawlings in evidence, on the ground that it was not the best evidence of the selection made for school purposes," &c. The objection was overruled, and the ruling excepted to.—(Record, p. 22.) Evidence was competent only to supply the missing proof of the "descriptive entry of such lands selected, made on the books of the register, specifying as well the township in which as that for the use of which the selection shall have been made." The irrelevancy and incompetency of the above evidence, illegally admitted, constitutes a fatal defect in defendant's title.

On page 28 the plaintiff asked an instruction, which was refused, equivalent to a demurrer to defendant's evidence, namely, that to divest the United States of its title not only must section 16 be disposed of, but that legal evidence must be given that the land in question was designated and set apart in lieu of section 16, and

the instruction closes in these words: "*No such designation or setting apart has been shown by the evidence.*"

There can be no other evidence of such selection than that provided for by the act of Congress.

The law says, "and the lands *thus* selected and located, viz: by descriptive entry in the books of the register, specifying the township in which, and that for which, the selection is made, are hereby granted to the state for the use of schools."

What proof have we except *incompetent* evidence of what the county records are believed by the witnesses to have shown? Let the evidence connected with Rawlings' books be left out, and defendant's title is entirely defective; and this evidence does not even tend to show that the register "selected and located" *these* lands.

There is no proof offered that the register performed the act which vested title in the state, for such title rests on the law, and where the law is plain the courts cannot substitute something else as an equivalent. Even if it has the same effect, it is not the same thing.

See Rector vs. Ashley, 6 Wallace, 142.

Nor is there any evidence in the record of a valid sale of the lands in section 16.

Instruction No. 1, refused, (p. 27,) asks the court so to declare, which was refused.

M. BLAIR,
F. A. DICK,
Of Counsel for Plaintiff.

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19. How 333

UNITED STATES SUPREME COURT,

DECEMBER TERM, 1871.

ROBERT G. HEDRICK,
Plaintiff in error,
vs.
SAMUEL T. HUGHES,
Defendant in error.

Error to the United States Circuit Court of Missouri.

Hedrick brought ejectment against Hughes to recover possession of the northeast quarter of section 17, in township 49, of range 16, in Howard county, Missouri. The suit was returnable to the April term, 1870. Hughes appeared and pleaded the general issue. The cause was under the rule continued to the October term, 1870, when the parties filed a stipulation, waiving a jury. The cause was tried on 5th November, 1870, and there was a verdict and judgment for the defendant. Hedrick presented a bill of exceptions, by which it appeared that the plaintiff at the trial put in evidence a patent, dated June 1, 1868, whereby the United States, reciting that in pursuance of an Act of Congress, approved 2d July, 1862, entitled "an Act donating public lands to the several States and Territories, which may provide colleges for the benefit of Agriculture and the Mechanic arts," there had been deposited in the general land office, Scrip No. 1535, for one quarter section of land, in favor of the State of Kentucky, duly assigned by the proper authority of the said State to Albert C. Widdicombe, with evidence that the same has been located upon N E. 17, T. 49, R. 16, in the district of lands subject to sale at Boonville, Mo., containing 160 acres, granted the said tract to the said Widdicombe. Also a deed dated Sept. 8, 1869, by which Widdicombe conveyed the tract to the plaintiff. It was admitted that defendant was in possession of the land in controversy at the commencement of the action, and had been so in possession since 3d April, 1839. The value of the land was proved to be more than $10,000, and its annual value $500—and here plaintiff rested. Defendant gave in evidence a patent, dated August 10, 1825, whereby the United States, reciting that full payment had been made by Nicholas S. Burkhardt, assignee of Christopher

Burkhardt, for north-east 16, T. 49, R. 16, and E. ½ of south-east 16, T. 49, R. 16, containing 240 acres of land, directed to be sold at Franklin, Missouri, granted said tract to said Nicholas Burkhardt. Also a patent, dated November 10, 1825, whereby the United States, reciting that full payment had been made therefor, granted to Nicholas Burkhardt, assignee of Roger and Elizabeth Barton, and Christopher Richardson, heirs of James Richardson W. ½ of S E. and N W. 16, T. 49 N., containing 240 acres. Also a transcript of the record of the County Court of Howard county, Missouri, dated May 2, 1831, whereby it appeared that Owen Rawlings was that day appointed Commissioner of the township school lands, in Howard county, and that he gave bond, with approved security, for the faithful performance of his duties. Also, that on 26th January, 1832, the County Court, pursuant to law, ordered him "to sell before the Court-house door, in the town of Fayette, Howard county, Missouri, for cash, the sixteenth section, in the several townships of Howard county;" that this order was obeyed, and that on the 23d August, 1832, Rawlings filed a report of his sale made under it, whereby it appeared that in strict compliance with its terms, he sold the school lands in the county. He made a special report of each tract, the purchaser and the price, and among the list appeared several tracts which were not in the sixteenth section, but in continuous sections, and treated by him as school lands. One of these being E. ½ of N E. 17, T. 49, R. 16, sold to Braxton C. Fugitt, for $6 81 per acre. (p. 13 and 14 printed record.) Also W. ½ of N E. 17, T. 49, R. 16, to James Hughes, at $7 per acre (p. 14). This report was received, approved and recorded. Fugitt then filed the receipt of Rawlings for the price of E. ½ of N E. 17, T. 49, R. 16, being $544 80, and Hughes filed Rawlings' receipt for the sum of $560 80, price of W. ½ of N E. 17, T. 49, R. 16, in the office of the Register of Lands, at Jefferson City, and thereupon and upon the report of Rawlings the State of Missouri issued patents to Fugitt and Hughes for their respective tracts, both dated 14th November, 1832. The first recited that a certificate had been filed in the Auditor's office, whereby it appeared that in pursuance of an act of the General Assembly of the State of Missouri, entitled "an Act to provide for the sale of Township School Lands," Fugitt had purchased the E. ½ of N E. 17, T.

49, R. 16, containing 80 acres, "being land granted by the United States to the State of Missouri, for the use of the inhabitants of said township for the use of schools," for the sum of $544 80, which sum Fugitt had paid, and thereupon the State of Missouri granted to him the said tract of land. The patent to James Hughes was similar, *mutatis mutandis*. All the title of James Hughes and B. C. Fugitt had come regularly to defendant, who proved moreover that he had been in exclusive and continuous possession of the land for 31 years, claiming it as his own, and erecting thereon permanent and lasting improvements, of the value of fully $10,000, and that the tract in controversy was treated as school-land several years before it was sold by Rawlings, being rented out as such. That the Book, Vol. 3, of the office of U. S. register of lands, at Boonville, Mo., (to which place the same had been removed from Fayette, in 1859,) was mutilated—pp. 375, 376, 377 and 378, which contained the record of the disposition by the U. S. of the land in T. 49, R. 16, in Howard county, Mo., being wanting and not to be found in the office of the Register or elsewhere. On this head, he examined Leonard Wright, (p. 20, and following of printed record) who testified that he was Register of the United States land office, at Fayette, from 1853 to 1859, when the office was moved to Boonville. He was succeeded by Brown. His predecessor was J. B. Todd, who succeeded H. L. Boon, in 1841. Boon had been register from 1825 to 1841. Boon was dead. Brown was alive, but was old and very infirm. Witness had seen the plat of T. 49, R. 16, in Howard county, in the books of the Register, at Fayette. The leaf containing this plat was loose and detached from the book, and placed in a drawer in the office. Witness supposed that this leaf, with the other papers of his office, was handed over to his successor—has no recollection of handing over this particular paper to him. Witness had searched in the office at Boonville, in 1870, for this old leaf. It is not to be found, and is either lost or destroyed. Shortly before witness left the office in 1859, the Clerk of Howard county court brought to him the book now produced in court, (to be presently more particularly referred to) purporting to contain a copy of the plats of the several townships in Howard county, as taken from the Register's books, and requested him to compare them and place on them memoranda of any entries made during

witness' term of office. Witness did so; found that this book corresponded with the original in his office as to all transactions prior to 1853, and he then noted on the book now before him all the subsequent entries. As to T. 49, R. 16, witness remembers that the books of the Register's office showed that in 1853 there was no land in it subject to entry. For that reason, his comparison of that plat was less thorough than others, but he examined and compared them all.

Defendant then examined Brown, who testified that he was the successor of Wright as Register. Never saw the leaf containing plat of T. 49, R. 16, spoken of by Wright. It was missing from the plat book when he took charge of the office. The book had become very much worn in the binding. The leaves that remained were rebound during his term of office. The leaf lost was replaced by one from the Surveyor General's office, which showed the New Madrid locations, and the confirmations by the various acts of Congress, but contained no mention of any entries made at the land office. The tract book of the Register's office was also mutilated. Witness, with Wright, examined it at Boonville during the past summer, and the plat, showing Sec. 17, T. 49, R. 16, was wanting in the tract book as well as in the plat book. Witness was succeeded, in 1861, by Boardman.

Defendant then examined James L. McNair, who testified that in 1853 he was Deputy Clerk of Howard County Court. Before that time, he had been a Deputy in the Register's office, his father being Register. By an act of the Missouri Legislature, the Clerk of the County Court was directed to procure a copy from the township plats in the Register's office, and witness was employed by Mr. Herndon, Clerk of the County Court, and Mr. Todd, Register, to make this copy. He made it very carefully. The book produced is the copy made by him. He compared it carefully with the original, and is satisfied it is a true copy. Witness desired to be understood, however, that it is not, in all particulars, a literal copy of any one book then in the Register's office. As to entries, the plat book in the Register's office would contain on any particular sub-division of land, the letters A. P., with a number; on another book would be seen the name corresponding with this number, and in

compiling this copy, now before the court, witness would write down the name instead of the number, thus translating it and condensing two books or plats into one. The letters A. P. signified "applied and paid for." In respect of reservations for schools, the words "reserved for schools," were written on the original plats, in the Register's office, on the tract so reserved. In respect of the copy of plat of T. 49, R. 16, witness testified that all the writing on it was his own, and he was certain the plat was at the trial in the same condition as when he made it in 1853, except that one irregular line, evidently drawn by some one without the aid of a rule, appears across one of the subdivisions of land, in a section different from 17. Witness remembers that there was no land in T. 49, R. 16, subject to entry in 1853. It had all been appropriated, according to the books of the Register's office, to private ownership before that time. Witness would not be able to speak as to any particular tract except by the aid of the copy now in court.

A. J. Herndon testified that for more than 25 years he had been Clerk of the County Court of Howard county. The book produced in court, and testified to by McNair, was the copy of the Register's book, taken in 1853, for the use of the county. The witness here repeated the history of that book as given by McNair, and added that when in 1859 the land office was being removed to Boonville, he took the book to Mr. Wright and requested him to compare it with his plats, and bring it up to that date as to entries made since 1853. Witness produced the book in court at the request of defendant. He also produced a book which was one of the archives of Howard county, kept in the office of the County Court, purporting to be the history of the proceedings of Owen Rawlings, school commissioner. The first thing in the book was a copy of his appointment as commissioner. Then followed a list of all school lands in the several townships of the county. This list was in the handwriting of H. L. Boon, at that time (1831) Register of lands. It appears from the entries that the list was made in 1831–32. Owen Rawlings had been dead for many years. The copy of the plat of T. 49, R. 16, was then given in evidence. (The contents of the book of Owen Rawlings already appear in the 3d document, put in by defendant).

To the introduction of these books and the copy of the plat the plaintiff objected, on the ground that they were not the best evidence attainable of the selection of land for school purposes, in lieu of the 16th section, previously disposed of by the United States. The court overruled the objection, and plaintiff excepted at the time. It appeared by the copy of the plat, that north-east quarter of Section 17, T. 49, R. 16, was reserved and selected as school land of that township, in lieu of part of section sixteen, and was marked and designated as such on the books of the register; and here defendant rested.

In rebuttal, plaintiff offered in evidence a certified copy from the office of the Register of lands, at Boonville, of the entries in T. 49, R. 16, West. By this it appeared that the N E. 16, and the E. ½ of S E. 16. T. 49, R. I6, making 240 acres, had been entered by Christopher Burkhardt, on February 12, 1820, and that the N W. 16, and the W. ½ S E. 16, T. 49, R. 16, making 240 acres, had been entered by R. and E. Barton and C. Richardson, on 13th May, 1819. Also that N E. 17, T. 49, R. 16, had been entered by Albert C. Widdicombe, on 13th October, 1866, by means of A. C. Scrip No. 1535. Also a letter from James S. Wilson, Commissioner general land office, dated Aug. 25, 1868, stating that the records of the Department of the Interior do not show that N E. 17, T. 49, R. 16, had been selected as school land, under act of 20th May, 1826, and inquiring whether the books of the land office, at Boonville, showed such selection. This letter was addressed to the Register and received at Boonville. They answered on 16th Sept. 1868, that the old plat had been destroyed some time back; that they had a new plat showing no entries, and that there was nothing in their office showing that N E. 17, T. 49, R. 16, had been received for schools. This was all the evidence.

Whereupon the plaintiff prayed the court to give the following declarations of law:

1. The court, setting as a jury, is requested to declare the law of this case to be that the United States did not part with its title to the land in question prior to the issuing of the patent certificate to Albert C. Widdicombe, read in evidence; and if it believe from the evidence that the said patent certificate and the deed from said Widdicombe and wife to the plaintiff, are

genuine, and that the defendant held possession of the premises as alleged, then the plaintiff is entitled to recover.

2. Neither the act of Congress, March 6, 1820, admitting Missouri into the Union, nor any subsequent act, operated as a grant *per se* to the State or to any of the inhabitants thereof, of the north-east quarter of section 17, and township 49, of range 16, west of the 5th principal meridian.

3. To divest the United States of its title thereto, it is necessary that not only the 16th section of said township or some of its sub-divisions had been sold or otherwise disposed of by the United States government, but also that said N E. ¼ of section 17, should have been designated and set apart according to law, in lieu of a similar quantity of the 16th section, sold or disposed of by the government prior to March 6, 1820, and no such designation or letting apart has been shown by the evidence.

Which declarations of law the court refused, plaintiff excepting thereto at the time.

The defendant asked the following declaration of law, which the court gave, to-wit:

If the court, sitting as a jury, shall believe from the evidence that prior to the 6th March, 1820, four hundred and eighty acres of section sixteen, in township 49, in range 16, had been disposed of and sold by the United States of America, and that the register and receiver of the United States land office, at Fayette, under the act of 3d March, 1823, to satisfy in part the claim of the State of Missouri, for section 16, reserved and selected the north-east quarter of section 17, in T. 49, R. 16, and a descriptive entry of said reservation was made, and appeared on the books of the Register of the U. S. land office, at Fayette, specifying the township in which, and the township to the use of which, the selection was made, but that the leaf containing the memorandum of such selection and reservation has been lost or destroyed, and that in 1832, the north-east quarter of Section 17, T. 49, N., R. 16, W., was sold by the State of Missouri, as school land, to James Hughes and Braxton C. Fugitt, and patented to them on 14th November, 1832, by the said State of Missouri; that the defendant claims under the patentees by derivative title, and has been in possession of N E. 17, T. 49, N., R. 16, W., since

the year 1839, claiming the same as his own—then the plaintiff cannot recover.

The plaintiff excepted to the giving of this declaration of law, and sued out this writ of error.

Defendant in error confidently submits that no error appears by the record. The title and possession of the defendant are marked by the highest good faith, and its legal validity is as unimpeachable as its equity is perfect.

It is permissible to remark upon the manifestly speculative nature of Mr. Widdicombe's proceedings. He enters, with agricultural college scrip, a tract of land which has been held, cultivated and inhabited for more than 27 years. Apparently fearful of an estoppel, in case he entered this land with agricultural college scrip issued to the State of Missouri, he procures a piece of scrip issued to the State of Kentucky. He enters land in a township, the plat of which, by some mischance, has been lost from the Register's books. He does this when Owen Rawlings, Commissioner of school lands, and Hampton D. Boon, Register of the United States land office, in 1831-2, and Mr. McNair, father of the witness, are all in their graves. We may presume that he ascertained that the records of the general land office contained no mention of the selection and reservation of this land for school purposes. Every precaution that seemed conducive to success, was observed by him, and the loss, by Col. Hughes, of the land on which a generation had lived and died, seemed assured. Either a gainful compromise by which Widdicombe would extort and Hughes would pay the value of the land, in order to save his improvements, or else the recovery of the land itself, seemed inevitable. For, there seemed to be no means of proving the contents of the missing plat which had been lost from the Register's office of T. 49, N., of R. 16, W. There were circumstances in abundance in Rawling's report and Hampton L. Boon's descriptive list, to produce *moral conviction.* But they fell short of legal proof, in a most tantalizing degree, and nothing short of legal proof would serve in a court of law. The difficulty was increased by the suggestion on the part of the Commissioner of the general land office, that the supposed selection and reservation must have been made, if at all, under the act of May 20, 1826. That act required the action of the Secretary of the Treasury. Of this

action some record would naturally appear in Washington City, both in the office of the Secretary and in the general land office. As nothing of the kind there appeared, the conclusion that no selection or reservation had any existence, was very natural, and seemed, indeed, irresistible. Nevertheless, with all his care and caution, (which were indeed most exemplary) Mr. Widdicombe permitted his hopes to mislead him. In the first place it was *not* the act of 20th May, 1826, but the act of March 3, 1823, that governed the selection and reservation of this land in lieu of section 16; and to the selection and reservation of land, in lieu of section 16, under the act of 3d March, 1823, the action of the Secretary of the Treasury was not necessary. In the second place, though the elder McNair was dead, and his son, who had copied the township plats in 1853, had removed from Missouri, his residence was discovered by the indefatigable defendant, and his vitally important personal attendance at the trial was secured. In the third place, the interest taken by the authorities of Howard county, in the defeat of this attempt at spoliation, was lively enough to induce the aged keeper of the archives to appear in person at the trial, and to bring his original books into court at the request of the defendant. Lastly, Col. Hughes was of stubborn materials. He resented the attack made upon a title to land he had derived from his father, and which had belonged to his family for almost half a century. He would entertain no terms of compromise, and determined not to slumber until he had collected all the secondary evidence needed to supply the place of the lost township plat. To those who see only the net result of the proof which he sought so long, from so many sources in vain, and to whom nothing appears of his fruitless searches and sickening disappointments which would have disheartened a less energetic spirit, but which only stimulated him to fresh exertions, it would appear that he really had very little difficulty in demonstrating his rights. It cost him in fact a year of anxious, expensive and active investigation; for he did not wait until suit was actually brought, to prepare for the trial. As soon as he knew that the patent was issued, he accepted the declaration of war, and made ready for the battle. He succeeded because of his energy, his indefatigableness, his vigilance, his shrewd good sense, and above all, his meritorious

cause. This combination seldom fails of the blessings of heaven. The historian puts into the mouth of Cato the sentiment which here receives an illustration: *"Non votis, ac suppliciis muliebribus auxilia Deorum parantur: agendo, vigilando, bene consulendo, omnia prospere cedunt."* The superintending Providence which the heathen attributed to the Gods of Olympus, we ascribe to a purer and more exalted Deity. But the truth proclaimed by Sallust, more than 1900 years ago, is as old as the world.

The title of the State to the school lands rests upon the following provisions, to-wit:—Upon the 6th section of the act of 6th March, 1820, which is as follows:

§ 6. That the following propositions be, and they are hereby offered to the convention of the said Territory of Missouri, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States, to-wit: That section numbered sixteen in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to the State for the use of the inhabitants of such township, for the use of schools."

(The other proposals, four in number, having no relevancy to the matter in hand, are omitted).

These proposals were accepted by the Missouri Convention, as appears by its ordinance, dated 19th July, 1820. Then ensued the debate on the "Missouri question," which resulted on the 2d March, 1821, in the passage of a resolution admitting the State into the Union upon certain fundamental conditions, provided the Legislature of the State should by a solemn act declare its assent to the same. This assent was declared by the Legislature on 26th June, 1821, and thereupon the President of the United States, by his proclamation of August 10, 1821, declared the admission of Missouri into the Union to be complete.

On the 3d March, 1823, an act of Congress was passed, the title of which is, "an Act concerning the lands to be granted to the State of Missouri for the purposes of education and other public uses," declaring (§ 1) "that in all cases in which section number sixteen, in any township in the State of Missouri has been sold or otherwise disposed of, it shall be the duty of the Register and Receiver of the respective land office in whose

district such land may lie, so soon after the passage of this act as may be, to select the like quantity of other lands equivalent thereto, from any unappropriated lands of the United States in that State, including the residue of such section where only a part of it has been disposed of, and the value of the residue is not materially diminished by such disposition, and as nearly contiguous to such sixteenth section as may be. And a descrip- "tive entry of such selected lands shall be made on the books "of the Register, specifying as well the township in which, as that "for the use of which, the selection shall have been made. And "the lands thus selected and located, are hereby granted to the "said State, for the use of the inhabitants of the respective "townships for the use of schools, instead of such sixteenth "section so sold or otherwise disposed of."

It was under this act that the Register and Receiver selected, and the Register located the school lands, in lieu of Sec. 16, in T. 49, R. 16, W., in Howard county, Mo.

It would appear (p. 27 of the printed record) that the accomplished Commissioner of the general land office, Joseph S. Wilson—a gentleman to whose accurate knowledge and eminent public services in a department he was so well qualified to adorn, I am glad to bear my feeble testimony—supposed that the law applicable to such a case as the present, was to be found in the act of 20th May, 1826; but this was a misconception, as a glance at its terms will show.

The title of the act of 20th May, 1826, is "an Act to appropriate lands for the support of schools, in certain townships and fractional townships, *not before provided for.*" By this it appears not to have been the intention of Congress to do again what was done already, but to make provision for cases not within the provisions of any existing legislation. But Missouri has already been fully provided for, in terms, by the act of 3d March, 1823. Looking to the body of the first section of the act of 1826, we find that the same intention is expressed that is so conspicuous in the title: "That to make provision for the "support of schools, in all townships and fractional townships "*for which no land has been heretofore appropriated for that use, &c,*" is the language employed. Plainly, no township in Missouri was within this category after March 3, 1823.

It is more than probable that the act of 1823, being a special act, was overlooked entirely by the general land office. But it is well known in Missouri, and has been frequently relied on as the basis of title.

One of the cases best known was decided by the Supreme Court of that State, in 1853. (The State to use of township 44, vs. Dent, 18 Mo. Rep. 313.) The land sued for, was part of Sec. 16, T. 44, N., R. 6, E.; being the north-east and north-west fractional quarters of that section, containing 227 acres of land. The residue of the section was covered by Spanish grants, confirmed by the United States. The plaintiff claimed the land as granted to Missouri by the act of Congress, 6th March, 1820. The defendant (Frederick Dent) claimed the north-west fractional quarter, by purchase at public sale, as public land, from the Register and Receiver of the United States, under the act of February 17, 1818, for which he obtained a patent 20th May, 1824. (It does not appear when the original purchase was made.) The north-east fractional quarter was entered as public land by the defendant, and the patent was dated 18th April, 1831. It appeared by the report of the Commissioners of school lands in St. Louis county, that Sec. 31, T. 45,* R. 6, E., containing 669 acres of land, had been selected by them in lieu of Sec. 16, T. 44, R. 6, E., and on the plat of T. 44, R. 6, E., in the Register's office, was a memorandum, "Sec. 31, in T. 45, reserved in lieu of Sec. 16, in T. 44, as school land," and across the Sec. 31, in T. 45, was written: "Reserved for Sec. 16, in T. 44, N., R. 6, E." The court remarked: (p. 317) "These entries on the plats in the Register's office, appear to be ancient entries, and the fact that the defendant bought the north-west fractional quarter of Sec. 16, in T. 44, at public sale by the Register and Receiver, for which he received a patent in 1824, proves beyond any reasonable doubt, that the selection of Sec. 31, in T. 45, was made by the Register and Receiver of the United States prior to the date of the patent to the defendant."

The school commissioners had sold Sec. 31, T. 45, and received the money in 1838. But, nevertheless, their successors were advised that they could, in 1853, claim the land by abandoning which, in 1824, they appropriated the more eligible section which they sold in 1838. The Supreme Court of Missouri

*This section was nearer St. Louis and presumably more valuable than S. 16, in T. 45.

held "that the United States and the State of Missouri were both bound by the selection and location of the land in T. 45, in lieu of Sec. 16, in T. 44, and that the effect of that selection and location was to satisfy the grant made to the State by the act of 6th March, 1820." This decision has not the sanction of the approval of this court, only because the School Commissioners were not enterprising enough to pursue their speculation further. Even the indomitable counsel, who represented them in the State courts, acquiesced in the judgment there pronounced, and it remains to this day the unquestioned law of Missouri. Without undertaking to penetrate the secret counsels of the plaintiff in this action, it is believed that his reliance was much less on the invalidity of the law thus declared, than on the supposed inability of the defendant to prove the facts which gave room for its application, and undoubtedly he had some grounds for supposing that the defendant could not make out these facts, so busy had Death been among all those by whom he could hope to give secondary evidence of the contents of the mutilated plat book.

It is idle to detain the court on the subject of the foundation laid for the introduction of this secondary testimony. The defendant perfectly understood that it was incumbent on him to show that the original or best testimony, was unattainable; and he established this, *rigorously*, by the evidence of Thomas B. Wright, (p. 19 of printed record); by that of John N. Gott, Receiver of public moneys at Boonville, (p. 20); by that of Leland Wright, former Register of the land office, when its place was changed from Fayette to Boonville, (pp. 20, 21), and Mr. Brown, who was the successor of Wright, (p. 21). Then by the testimony of James L. McNair, (pp. 21, 22), he proved the contents of the missing leaf, through an examined copy, made by McNair in 1853. By this leaf it appears that the north-east quarter of Sec. 17, T. 49, N., R. 16, W., was reserved for school lands in that township, in lieu of section 16, otherwise disposed of; and it is too plain for argument, that whatever could have been proved by the production of the original missing leaf, is now provable by the examined copy.

But precisely what was proved by the examined copy, is what the act of 3d March, 1823, requires. That act was passed

for Missouri alone. It directed the Register and Receiver, whenever section 16 had been sold or otherwise disposed of, to select, as soon as may be after the passage of this act, the like quantity of unappropriated land, as nearly contiguous as might be. This was their duty. When it was performed, we cannot exactly tell. But it must have been performed some years before 1831, for this N E. 17, T. 49, R. 16, had been rented out by the year, some time before the appointment of Rawlings as Commissioner. The list of school lands made for Rawlings, was made by H. L. Boon, who had been Register since 1825. The act required the work to be done without delay, and we have every right to conclude that it was accomplished in 1823, within a few months after the promulgation of the act of March 3d. These officers were directed to make "a descriptive entry of such selected land, on the books of the register, specifying as well the township in which, as that for the use of which, the selection shall have been made." The object is plain. It was necessary that the Register's books should show the appropriation (it was a gross omission on the part of Congress not to require him to certify it to the general land office also). But it can hardly be an objection to this descriptive entry that it is made briefly, provided, it does not incur the frequent penalty of brevity and remain obscure. When land in one township is selected, in lieu of the 16th section in another township, (as was the case in the State of Mo. vs. Dent, cited from 18, Mo. Reports), the entry requires more particularity. This would naturally occur in fractional townships, or in those where the bulk of the land was taken up by Spanish grants. In the rest of the State the requirement of the act that the land should be as contiguous as possible to section 16, would, for the most part, be easily obeyed, by selecting land in the same township. In such cases the marking of the selected section as school land, would be all that would be necessary. The plat would show that section 16, or part of it, had been "sold or otherwise disposed of," and that equivalent lands in the neighborhood had been reserved for schools. If nothing more appeared, it would follow that the reservation referred to the same township. There was no possibility of mistake on this head, and the selection and reservation were complete as soon as the Register and Receiver had performed this duty. But the moment the land was thus selected and reserved, it was

by the act of March 3, 1823, "granted to the said State for the "use of the inhabitants of the respective townships, for the use "of schools instead of said sixteenth section so sold or otherwise "disposed of."

The Circuit Court found affirmatively every fact conducing to the defendant's title. By the instruction given, it was declared the duty of the defendant to show that section 16 had been sold prior to 6th March, 1820; that under the act of 3d March, 1823, the Register and Receiver reserved and selected the N E. 17, T. 49, N., R. 16, W., to satisfy in part the claim of Missouri for section 16, and made on the Register's books a descriptive entry, showing the township in which, and that for the use of which, the selection was made, but that the original leaf, showing this descriptive entry, had been lost; that this N E. 17, was in 1832, sold by the State as school land, and patented to defendant's ancestor; and that defendant had been in possession of it since 1839. Now, in proving all these things, defendant assumed some unnecessary burdens. He might, perhaps, have satisfied himself with showing the selection and reservation of the land, whereby it became the property of the State of Missouri, without connecting himself with the title, or showing his long possession. But surely he has not weakened his case by proving that his ancestor purchased the land; that he lived and died on it, and that it is now held under him by the second generation.

It would have been an interesting inquiry if Mr. McNair had disappeared from earth, how far the rest of the evidence would have availed the defendant. It is believed that it would have sufficed. Leland Wright testifies, as does McNair, that in 1853 there was no vacant land in this T. 49, R. 16, in Howard county, and in saying so, he spoke from what the books of the land office showed him. True, he could not say in what manner N E. 17, T. 49, N., R. 16, W., appeared from that book, to be appropriated. But by the handwriting of a former Register, (H. L. Boon,) it would seem that it was appropriated as school land, and as matter of fact, it had been treated as school land in 1831-32, both by that officer and the School Commissioner, to say nothing of the State of Missouri, whose agent Owen Rawlings was, as well as of Howard county. Now it could only have been school land, by reason of being selected and reserved as

such, instead of section 16, sold or otherwise disposed of. That section 16 had been sold prior to 6th March, 1820, was clear. That N E. 17, T. 49, R. 16, *might* have been rightfully selected and reserved as school land, in lieu of it, under the act of 3d March, 1823, was equally plain, and clearly it was treated by all the agents of the U. S. and of the State of Mo., as if it had been so selected and reserved. It is very difficult and indeed impossible to account for this concurrence, except by supposing that the steps necessary to transfer the title to N E. 17, from the United States to the State of Missouri, had been taken. The direct evidence by which this should rigorously appear, had disappeared, and (by the hypothesis) no means existed of furnishing secondary evidence of its tenor. Even then, it is submitted that evidence *tending to show* the actual legal, regular occurrence of every formality and ceremony required by the act of 3d March, 1823, would have been furnished. All that was shown would be consistent with this conclusion. No single circumstance would militate with it. As matter of fact, it can hardly be doubted that the probabilities would strongly incline in favor of the taking, by the Register and Receiver, of every step necessary to vest title in the State. Any other supposition would require us to believe that they had signally failed to do their duty, and that Rawlings, as well as the purchasers of school lands in 1832, acted like school-boys, and very foolish school-boys, too. It is a familiar maxim that *"Ex diuturnitate temporis, omnia presumuntur rite ac solenniter esse acta."*

The good fortune of the defendant in finding Mr. McNair, renders him independent of the answer that would be given to the case supposed. The undersigned submits that this answer must have been fatal to the pretensions of the plaintiff. But that the plaintiff upon this record, with the addition of the testimony of McNair, is shown to have attempted to purchase from the United States, in 1866, land which the United States 43 years before had in the most solemn manner conveyed to the State of Missouri, is established, he ventures to think, beyond cavil or controversy. Respectfully submitted.

THOMAS T. GANTT,
for SAM. TAYLOR HUGHES,
Defendant in Error.